Supreme Court, U.S.
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06-6 No. _____

In The
Supreme Court of the United States

CAN-AM INTERNATIONAL, L.L.C.,

Petitioner,

v.

THE REPUBLIC OF TRINIDAD AND TOBAGO;
THE TOBAGO HOUSE OF ASSEMBLY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

ALICE OLIVER-PARROTT
Counsel of Record for Petitioner
MARIA TERESA ARGUINDEGUI
Attorney for Petitioner
SHARI GOLDSBERRY
Of Counsel
BURROW & PARROTT, L.L.P.
1301 McKinney Street
Suite 3500
Houston, Texas 77010-3092
(713) 222-6333

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

Did the foreign defendants waive the right to assert sovereign immunity under 28 U.S.C. §1605(a)(1) of the Foreign Sovereign Immunity Act where they expressly waived such immunity?

Did the foreign defendants waive the right to assert sovereign immunity under 28 U.S.C. §1605(a)(2) where the plaintiff acted as the defendant's agent-in-fact while conducting commercial activity in the United States and was directly affected?

LIST OF PARTIES

Petitioner is Can-Am International, L.L.C.

Respondents are the Republic of Trinidad and Tobago and the Tobago House of Assembly.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Can-Am International, L.L.C. is a privately owned limited liability company organized in the State of Texas. None of its ownership interest is owned by a publicly traded corporation.

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PETITION FOR WRIT OF CERTIORARI

Can-Am International, L.L.C., is an American Company organized in the state of Texas. Laura Lee Sorsby is its founder and CEO. Ms. Sorsby has extensive experience with international financing arrangements. The Republic of Trinidad and Tobago ("T&T") is comprised of two islands in the Caribbean near Venezuela. At the request of T&T, Ms. Sorsby, as CEO of Can-Am, submitted her credentials. With knowledge that Can-Am was an American Company and operated in the United States, T&T, through its legislative body the Tobago House Assembly (THA), appointed Ms. Sorsby as that Government's agent for the solicitation of funding for various projects on the islands. Can-Am was to receive a 10% commission as compensation for securing funding.

While acting as T&T's agent, Can-Am secured several funding program proposals all of which were rejected by the Government. Finally, T&T accepted a funding proposal and, through its Chief Secretary, Hochoy Charles, the highest government official in charge of Finance (akin to our U.S. Secretary of the Treasury), signed an irrevocable pay order which included an express waiver of immunity. Ultimately, the Government reneged on the funding project leaving Can-Am uncompensated for years of efforts on behalf of the Government.

Can-Am sued T&T and its governing body the THA in the district court for breach of contract, fraud, negligent misrepresentation, promissory estoppel and quantum meruit. T&T and THA (collectively "the T&T Government") raised the defense of foreign immunity

under 28 U.S.C. §§1602, *et seq.* and the district court dismissed the suit on those grounds.

OPINIONS AND ORDERS BELOW

The U.S. Court of Appeals for the Fifth Circuit denied Petitioners Panel Petition for Rehearing in this case and its order is unpublished. (App. C). The Fifth Circuit Court of Appeals opinion affirming the district court decision is unpublished. (App. A). The district court is the United States Southern District of Texas and its opinion is unpublished. (App. B).

JURISDICTION

Petitioner seeks review from the opinion and judgment of the U.S. Court of Appeals for the Fifth Circuit of March 15, 2006. The Fifth Circuit denied a petition for rehearing on March 30, 2006. (App. C). The U.S. Supreme Court has jurisdiction to review cases from federal courts of appeals by virtue of 28 U.S.C. §1254(1) (2000).

FEDERAL STATUTES INVOLVED

This Petition involves questions involving a number of aspects of foreign sovereign immunity as prescribed by Congress under the Foreign Sovereign Immunities Act (FSIA) of 1976, 28 U.S.C. §§1602, *et seq.* In particular, at issue in this petition is the "waiver of immunity exception"

and the "commercial activity exception" promulgated at 28 U.S.C. §1605(a)(1-2).

STATEMENT OF THE CASE

As this Court has consistently observed, Congress legislated the 1976 Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§1602, *et seq.*, in order to "remedy [then existing] problems [with civil actions involving foreign sovereigns as defendants] by enacting . . . a comprehensive statute containing a 'set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies, or instrumentalities.'" *Republic of Austria v. Altmann*, 124 S.Ct. 2240, 2249 (2004) (quoting *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 488 (1983)); *First Nat'l City Bank v. Banco Para el Comercio de Cuba*, 462 U.S. 611, 622 n.11 (1983) (noting that "[w]hen it enacted the FSIA, Congress expressly acknowledged the importance of developing a uniform body of law concerning the amenability of a foreign sovereign to suit in United States courts") (quotation omitted). The FSIA not only defines foreign sovereigns and their agencies and instrumentalities, *see* 28 U.S.C. §1603; it also establishes rules as to the exceptions to immunity of foreign sovereign defendants, *see* 28 U.S.C. §1605.

Where the underlying cause of action falls within any of the clearly-enumerated exceptions provided for in the Act, *see* 28 U.S.C. §1605, a foreign sovereign defendant is subject to the jurisdiction of courts in the United States. Among these exceptions are cases involving a foreign

sovereign's waiver of immunity, *see* 28 U.S.C. §1605(a)(1) or commercial activities, *see* 28 U.S.C. §1605(a)(2).

In this case, the T&T Government expressly waived sovereign immunity by entering into an irrevocable pay order. In addition, the T&T Government appointed Ms. Sorsby, as CEO of Can-Am, their agent to procure commercial funding opportunities for projects in T&T with full knowledge that she conducted her business in the United States and her company, Can-Am, was formed in the State of Texas.

REASONS FOR GRANTING THE PETITION

As this Court has previously noted the FSIA provides "the sole basis for obtaining jurisdiction over a foreign state in our courts." *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989). As a consequence, the FSIA is an extensively litigated statute, with hundreds of cases decided each year in which a citizen brings suit against a foreign state, or an agency or instrumentality of a foreign sovereign.

It is for these reasons that this Court, in the wise exercise of its plenary review powers, has recently addressed issues of interpretation and application of the FSIA. *See Dole Food Co. v. Patrickson*, 538 U.S. 468 (2003); *Republic of Austria v. Altmann*, 541 U.S. 677 (2004); *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005); *Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran*, 126 S.Ct. 1193 (2006).

The Fifth Circuit's Opinion rewards a foreign sovereign for breaching a contract that contains an express waiver of immunity by granting immunity and is in direct contradiction with this Court's well-reasoned holdings in *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992), regarding the commercial character of Can-Am's actions. The Fifth Circuit's erroneous holdings must be corrected so that this important law can be correctly applied throughout the many district courts.

1. The T&T Government Expressly Waived Immunity.

After an exhaustive review of case law, no other Circuit Court or any U.S. Supreme Court cases hold that an express waiver of immunity clause has been obliterated because the contract was deemed conditional. The Fifth Circuit's conclusion that the express waiver provision in this case was somehow conditional is contrary to the clear and unambiguous language of the waiver provision itself. (App. F3). Under the Fifth Circuit's interpretation of an express waiver provision, any time a sovereign wrongfully breaches a contract with a United States citizen that contains a provision expressly waiving sovereign immunity, that sovereign will nevertheless be granted immunity because the contract containing the waiver was breached and not completed.

Section 1605(a)(1) of the FSIA states the following:

> a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case –
>
> (1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver

> which the foreign state may purport to effect except in accordance with the terms of the waiver;

28 U.S.C. §1605(a)(1).

In this case, the Government explicitly waived immunity as required by the FSIA by entering into an irrevocable pay order containing an express waiver of immunity (the Bower Cotton transaction). (App. F3). Contrary to the Fifth Circuit's Opinion, the plain language of the written transaction documents demonstrates that the express waiver of immunity in this case was "effective" and not "conditional." The THA, acting for and on behalf of T&T, agreed that it was "waiving all rights of immunity regardless of whether diplomatic, sovereign, or otherwise . . . " (App. F3) Nothing in this language or the rest of the transaction documents in question suggests the express waiver was conditional. *Id.* The Fifth Circuit's Opinion is clearly erroneous and allows a sovereign to benefit from its breach by granting immunity in spite of an express waiver of immunity. To allow the Fifth Circuit's decision to stand would in effect reward T&T for breaching the contract they voluntarily entered into and setting a dangerous precedent for other nations to follow.

As the documents clearly demonstrate, the Chief Secretary actually approved the contract in the Bower Cotton proposal under penalty of perjury. (App. F1). Can-Am was to receive a 10% commission for securing funding. Ms. Sorsby secured funding for the T&T Government through the Bower Cotton transaction and Mohammed pledged to that transaction that funding was accepted on behalf of the T&T Government, by Hochoy Charles, the highest government official for Finance for the T&T Government, when he issued a Letter of Exclusivity giving

Peter Newton/Bower Cotton the exclusive right to enter the contract. The matching transaction codes on all documents related the funding of this transaction including, but not limited to, the Letter of Exclusivity and Irrevocable Pay Order evidenced the approval of the transaction. Mr. Newton preceded with the contract to enter the funds and probed the bank account at the instruction of the Chief Secretary and Secretary of Finance, Hochoy Charles, but the T&T Government did not have the funds that they pledged under penalty of perjury that they had, therefore causing a breach in the contract. (App. F).

Ultimately, the T&T Government reneged on the funding secured for them leaving Can-Am uncompensated for years of efforts on the T&T Government's behalf. Ms. Sorsby did everything she was requested to do. Her performance was complete without complaint or criticism. (App. F).

The failure to fund was not a "decision" made by the Chief Secretary and there is no language suggesting that the waiver was conditional on the government not breaching the agreement. (App. F). The Fifth Circuit's reasoning ignores the Government's clear and express waiver and allows any foreign state in breach of an agreement with an explicit waiver of immunity clause to use its own wrongful breach as a defense to waiver. That is clearly not the purpose of immunity under the FSIA. The T&T Government should not receive their reward of jurisdictional immunity because they chose to breach a written agreement. The Fifth Circuit's Opinion must be corrected to prevent other nations from entering into contracts containing express waivers of immunity, later breaching those agreements and using that very breach to escape prosecution in the United States.

2. All Three Prongs of The Commercial Activity Exception Apply.

Even disregarding the T&T Government's express waiver of immunity under the FSIA, the undisputed facts demonstrate that the commercial activity exception applies in this case.

Section 1605(a)(2) of the FSIA states the following:

> a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case –
>
> (2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

28 U.S.C. §1605(a)(2).

a. The causes of action in this case are based upon a commercial activity carried on in the United States by an agent of the foreign state, Ms. Sorsby; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere.

Contrary to the Fifth Circuit's ruling, Ms. Sorsby, as CEO of Can-Am, conducting financial consulting services at the written request of the T&T Government, and as their agent and financial consultant, in the United States means the T&T Government carried on commercial

activity having a substantial contact with and in the United States. Ms. Sorsby acted as an agent of the foreign state while conducting commercial activity inside the United States. Specifically, Ms. Sorsby solicited various funding proposals for the T&T Government from her offices in Texas.

The Fifth Circuit's opinion relies on factors defined in *Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines* to determine whether an agency relationship existed between Can-Am and the T&T Government, but ignores the distinguishing and dispositive fact that in this case there was a formal agency agreement between the parties. The *Walter Fuller* case did not involve an express agency agreement between the Philippine government and the PGCC. 965 F.2d 1375 (5th Cir. 1992). Here, there is a written agency agreement between the parties. Hochoy Charles, with the proper authority as Chief Secretary, formally appointed Ms. Sorsby, CEO of Can-Am, as the Government agent and the financial consultant. As "financial consultant," Ms. Sorsby was granted "the authority and responsibility to oversee the financing process, on behalf of the Assembly." *Id.* The Fifth Circuit's conclusion that Can-Am did not substantiate that it acted as the agent of the Government simply ignores the undisputed record in this case.

Moreover, the Fifth Circuit's Opinion erroneously concludes that it is illogical that Ms. Sorsby's conduct in the United States qualifies as the commercial activity of the T&T Government on whose behalf and at whose request Ms. Sorsby acted in the United States. The Fifth Circuit concludes "there are no cases to support the notion that investigating potential investments options constitutes commercial activity under the FSIA." The FSIA

defines commercial activity as "either a regular course of commercial conduct or a particular commercial transaction or act." 28 U.S.C. §1603(d) (1988). The commercial character of an act must be determined by reference to the nature of the act and not its purpose. *Id.* Taken together, these two provisions mean that "when a foreign government acts, not as a regulator of a market, but in the manner of a private player within it, the foreign sovereign's actions are commercial within the meaning of the FSIA." *See Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 614, 112 S.Ct. 2160, 119 L.Ed.2d 394 (1992) (holding sovereign's issuance of debt constituted commercial activity). To determine whether the foreign state acted in the manner of a private player in the market, the court must look to the type of actions in which the foreign state engaged. *Id.* If the actions are the type that private persons are able to legally engage, then the actions are commercial under the FSIA. *See Rush-Presbyterian-St. Lukes Medical Cent. v. Hellenic Republic*, 877 F.2d 574, 578 (7th Cir.), cert. denied, 493 U.S. 937, 110 S.Ct. 333, 107 L.Ed.2d 322 (1989).

In *Weltover*, this Court held that a sovereign's issuance of debt instruments was commercial activity under the FSIA. The Court reasoned as follows:

> The commercial character of the Bonds is confirmed by the fact that they are in almost all respects garden-variety. debt instruments: They may be held by private parties; they are negotiable and may be traded on the international market (except in Argentina); and they promise a future stream of cash income.

504 U.S. 607, 616, 112 S.Ct. 2160, 2167.

It is illogical that a sovereign's investigation of potential investment options would be any less commercial in nature than a sovereign's issuance of bonds as part of a plan to stabilize its currency, as was the case in *Weltover*.

The T&T Government was acting as a "private player" in directing its agent and financial consultant to seek in the U.S. investment opportunities from United States companies. It is undisputed that Ms. Sorsby engaged in many activities in the United States at the behest of the T&T Government that qualify as commercial activity. (App. D). For example, in 1999, Ms. Sorsby went to the United States at the request of the Government and negotiated with numerous people on the Government's behalf. The negotiations resulted in: (1) Ms. Sorsby submitted a funding program proposal from Gee & Jenson, an American company, headquartered in West Palm Beach, Florida; (2) Ms. Sorsby and Rennie Dumas, the THA's Business Analyst, continued their work in the United States and Tobago on funding program proposals; (3) Allan Richard's wrote to Ms. Sorsby in the U.S. to set up meetings in Tobago for her to travel to Tobago with Hugh Hague from Canada, to complete the Bower Cotton proposal and travel on to London for a meeting with Bower Cotton all of which including, but not limited to, the irrevocable pay order and letter of exclusivity was negotiated and originated in the U.S. in the office of Can-Am attorney through telephone conferences, fax, and e-mail prior to traveling to Tobago and on London; (4) Ms. Sorsby was also pursuing potential funding programs in the United States through proposals made by Raymond James and Frankwell Investments, two additional American companies; and (5) the T&T Port Authority also contacted Ms. Sorsby regarding funding programs to finance port

upgrades, and the Minister of Energy and Energy Industries regarding the Raymond James proposal. (App. D).

In 2002, at the request of the government: (1) Ms. Sorsby and government representatives continued working together in the United States and Tobago on funding programs by Raymond James and Frankwell Investments; (2) Ms. Sorsby continued her efforts in the United States to secure funding proposals for the ferry project; (3) Allan Richards issued a formal invitation to the United States for scheduled meetings in Tobago for Raymond James and Frankwell Investments; and (4) the Chairman of Petrotrin, the government owned oil company, wrote to Ms. Sorsby in the United States requesting a funding program proposal by Raymond James. (App. D).

In this case, there can be no question that Can-Am's conducting financial consulting services in the United States as the actual and apparent agent for a foreign government should qualify as a commercial act performed by a foreign state in the United States. The Fifth Circuit's holding is simply contrary to well-settled principles of agency law. *See Holloway v. Skinner*, 898 S.W.2d 793, 795 (Tex.1995) (holding the acts of an agent on behalf of its principal are deemed to be the principal's acts). On this record, both the first and second prongs of the commercial activity exception under the FSIA are satisfied.

b. The causes of action in this case are based upon an act outside the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.

In so far as the third prong of the commercial activity exception, without question the T&T Government's breach

caused a direct effect on the United States. Ms. Sorsby is an American citizen and CEO of an American company who was to be compensated for her work in the United States. The Fifth Circuit's narrow focus on the Bower Cotton transaction fails to recognize that the Bower Cotton transaction as well as many other funding proposals were negotiated and originated in the United States. At the urging of the Government, Ms. Sorsby, as CEO of Can-Am, and the duly appointed agent and financial consultant for the T&T Government, dedicated three years performing the work requested of her by T&T Government officials.

The T&T Government's wrongful conduct directly affected a United States citizen and a United States company engaged by the Government to solicit sources in the United States for commercial financing originating in the United States, and to create profits to fund critical infrastructure projects in the foreign country. The third prong of the commercial activity exception is, therefore, also satisfied.

CONCLUSION

The T&T Government's wrongful conduct should not be rewarded by ignoring the explicit waiver or disregarding the true nature of the Government's commercial activities in the United States. Doing so would render bargained-for explicit waivers of immunity worthless in the wake of a foreign governments breach and set a dangerous precedent for future cases.

For the forgoing reasons, Petitioners respectfully request that certiorari be granted.

Respectfully submitted,

ALICE OLIVER-PARROTT
Counsel of Record for Petitioner
MARIA TERESA ARGUINDEGUI
Attorney for Petitioner
SHARI GOLDSBERRY
Of Counsel
BURROW & PARROTT, L.L.P.
1301 McKinney Street
Suite 3500
Houston, Texas 77010-3092
(713) 222-6333

APPENDIX A

169 Fed. Appx. 396

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20007

CAN-AM INTERNATIONAL, LLC,

Plaintiff-Appellant,

v.

THE REPUBLIC OF TRINIDAD AND TOBAGO;
THE TOBAGO HOUSE OF ASSEMBLY,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas, Houston Division

(Filed March 1, 2006)

Before GARWOOD, CLEMENT, AND PRADO, Circuit Judges.

EDWARD C. PRADO, Circuit Judge:*

Can-Am International, L.L.C. ("Can-Am") appeals the district court's entry of final judgment dismissing its action for lack of subject matter jurisdiction. The district court found that no exception to sovereign immunity

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

applies under the Foreign Sovereign Immunity Act ("FSIA"), 28 U.S.C. § 1602 *et seq.*, to support jurisdiction over Appellees.

I

Appellant Can-Am International, L.L.C. is registered in Texas. Laura Lee Sorsby is its founder and CEO. Appellees are the Republic of Trinidad and Tobago and one of its political bodies, the Tobago House Assembly.

The Republic of Trinidad and Tobago ("T&T") comprises two islands in the Caribbean Sea near Venezuela. After achieving independence from Great Britain in 1962, the T&T central government established the Tobago House of Assembly ("THA") to administer Tobago Island. The THA consists of an Executive Council, which comprises several Secretaries, including the Chief Secretary. The responsibilities of the Office of Chief Secretary include planning Tobago Island development projects. At all relevant times in this case, the House Chief Administrator or Chief Secretary was either Allan Richards or Hochoy Charles.[1]

In 1997, Sorsby marketed her services as a financial consultant to T&T and the THA. After learning that the THA needed financing for various development projects, Sorsby incorporated Can-Am International, L.L.C. ("Can-Am") in Texas in 1998 and began submitting finance proposals to the THA.

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[1] The titles of these individuals and the dates in which they held these titles are not clear from the parties' briefs, but (like the district court noted in its order) these details do not affect the court's disposition.

Can-Am asserts that it sought funding proposals for conventional financing to be backed by a government guarantee in early 1998. Later, in November 1998, it sought funding proposals for conventional financing to be collateralized by THA assets. On February 5, 1999, Sorsby sent a letter to Richards outlining a financing program Sorsby had arranged through a large United States insurance company. In that letter she wrote:

> We are willing to come back to Tobago and work with you in order to try and put this whole thing together. But before we come, we would appreciate it if you could appoint our company as your consultant/agent. This does not commit the Government to anything. You do not have to pay us anything if the loan does not go though [sic]. If you decide you do not wish to take the loan and participate in the trading program, then the appointment becomes null and void.

On February 22, 1999, the THA appointed Sorsby, CEO of Can-Am International, L.L.C., as the financial consultant for three of its development projects. Paragraphs 5 and 6 of the appointment letter read:

> 5. This agency will be revoked in writing if Ms. Sorsby has failed to perform.
>
> 6. This agency agreement will remain in effect for six months, with an option of renewal, subject to the Tobago House of Assembly's satisfaction with Ms. Laura-Lee [sic] Sorsby's performance and the continuance of its engagement with ongoing financing arranged by Can-Am International L.L.C.

Charles allocated THA office space to Sorsby along with this appointment.

On March 27, 1999, the parties formalized their relationship by outlining their respective responsibilities in a Memorandum of Understanding ("MOU").[2] Sorsby's responsibilities included: introducing different financing structures to the THA for government review and selection; arranging the funding institution subject to THA approval; providing contractual arrangements with program managers of trading groups acceptable to the THA; negotiating interest rates, if required, payable on the funds held in T&T's account, subject to the approval of the THA; arranging for the profits generated by the financing program to go into a THA trust account; working with the THA to arrange collateral, if required, for the financing program selected by the THA; and investigating and arranging the lowest interest rates, if required, for the THA's selection and approval.

The THA's responsibilities under the MOU included: providing the most feasible and high priority projects for financing; getting all the necessary government approvals to implement the financing program selected by the THA from those submitted by Sorsby; executing all documents necessary to implement the selected financing program; and arranging all necessary government collateral as required.

The MOU states in paragraph 1.1, "All matters that require financial commitments by the THA shall be brought to the notice of the THA for agreement before any final commitments are made."

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[2] As noted by the district court, the MOU states that it is between the THA and Sorsby, rather than the THA and the plaintiff Can-Am. The district court did not decide "whether the party designation was part of an on-going misrepresentation or merely a drafting error."

The MOU's fee clauses provide that:

> THA agrees to pay the Financial Consultant a fee equal to ten percent (10%) of all monies earned from the private placement (or other funding programs) out of funds provided to THA generated by the funding program arranged by the Financial Consultant. . . .
>
> In the event that THA selects a form of conventional financing from the financing structures submitted by the Financial Consultant, the parties shall negotiate . . . a fee agreeable to both parties to compensate the Financial Consultant for the services in arranging such financing.

As to duration, the MOU states:

> 1.4 The agency appointment will remain in effect from the time trading begins or as long as THA is receiving funds through any trading programs of financial arrangements provided by the Financial Consultant. . . .
>
> 1.5 This agency appointment can only be revoked in writing if the Financial Consultant fails to perform on the terms of this MOU.

Furthermore, the MOU has a choice of law provision: "This MOU and all amendments thereto shall be governed and constructed in accordance with the laws of the Republic of Trinidad and Tobago."

The THA did not pursue the financing program outlined in Sorsby's February 5th letter. In early April 1999 Sorsby arranged for the THA officials to travel to London, England, for a series of meetings where various

individuals presented investment opportunities for the THA's consideration.[3] One proposal came from a London firm called the Bower Cotton Group, for which payment was guaranteed by a bank in Switzerland. The proposal required Appellees to invest ten million United States dollars. Three days afterwards,[4] Sorsby wrote the THA's Chief secretary:

> We have wonderful and timely news for the THA. Bower Cotton . . . [has] available at the present time US$100 million dollars of good clean funds. They have an investor they are placing into the program. Because of the investor's contract with Bower Cotton . . . we are on a short time fuse [sic].

After requesting a letter of intent, proof of funds, and pay orders, Sorsby wrote, "We must have these things in order to get your contract issued from the bank for your review and approval." Regarding the pay orders, she wrote, "Remember our pay orders are generated through the trade, so if you do not go forward with the contract, these pay orders will be worthless."

Thus, upon returning to Tobago, the House Chief Secretary executed various documents related to the Bower Cotton proposal including a letter of intent, an "Irrevocable Pay Order" ("pay order"), and a letter of exclusivity. These documents explicitly reference a code specifically designated for the Bower Cotton proposal and are signed by the THA Chief Secretary Charles. The

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[3] Although Appellees originally sought conventional financing proposals, it considered financing through investment.

[4] The letter erroneously bears the date March 12, 1999. It should have been dated April 12, 1999.

documents are dated April 19, 1999, but were signed on April 30, 1999.

The letter of intent is addressed to Peter Newton,[5] the program manager for the potential investment, and states, "I herewith grant you the exclusive right to provide me with the best available investment program to facilitate the private placement of these funds." The letter provides that the THA Chief Secretary is "willing and able to enter $ Ten Million U.S. [sic] dollars for participation into a private bank-secured investment programme, subject to my [the Chief Secretary's] approval of the contract."

The pay order provides that Sorsby, in her individual capacity, will receive "[a] total of 10% (Ten Percent) of the net disbursable profits received by [the THA] or any Company on their behalf to facilitate the investment transaction. . . . " The pay order names Sorsby as the beneficiary. It also states, "The Irrevocable Pay Order is valid upon commencement of the start of the transaction herein. . . . " The pay order also includes a waiver of immunity rights, and it submits the transaction to governance under the International Chamber of Commerce Rules of Conciliation and Arbitration.

The letter of exclusivity is also addressed to Newton and states in relevant part: "I [Charles], the undersigned, herewith grant the trade program manager/administrator/facilitator full exclusive right as our sole agent for 20 banking days from the above date [April 19, 1999], to

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[5] Appellees identify Newton as an affiliate of Nikea, N.V. ("Nikea"), an engineering company that Sorsby alleges would have helped to construct the THA's projects.

enter these funds for me, or the corporation into the best available bank-secured investment program."

Despite Sorsby's recommendation to accept the Bower Cotton proposal and a letter from her stating that there was a short window of time to decide, the THA did not fund the Bower Cotton proposal. On July 11, 1999, Sorsby wrote an email to Rennie Dumas, a staff member at the THA, and stated, " . . . I cannot afford to keep giving away my services. . . . [T]he letter [Charles] prepared and the payorder [sic] meant nothing since [the THA] did not go forward." Sorsby continued to submit investment proposals to the THA, which rejected them all. On March 7, 2000, Sorsby wrote a letter addressed to Charles expressing her frustration with the THA: "I have always tried to get you what you need, lawyers, funding etc. [sic], and have not ever charged you a dime." Thereafter, some THA officials met with some financiers introduced by Sorsby, but did not enter into any agreement with them. The THA never obtained or received any money from any financing source introduced by Sorsby or Can-Am.

II

In November 2001, Can-Am filed a complaint against T&T and the THA in the District Court for the Southern District of Texas. It later filed an amended complaint to include a claim for quantum meruit. T&T and the THA filed a motion to dismiss, or alternatively, a motion for summary judgment based primarily on the Foreign Sovereign Immunity Act (FSIA). The district court denied the motion because it needed discovery to decide the issue of whether the FSIA applied to Appellees.

After discovery, in April 2004, T&T and the THA filed a motion for summary judgment claiming the court did not have jurisdiction over Can-Am's claims pursuant to the FSIA. Alternatively, they argued for summary judgment because no genuine issue existed as to any material fact and that both T&T and the THA were entitled to judgment as a matter of law for all claims.

On September 8, 2005, the district court judge dismissed Can-Am's claim for lack of subject matter jurisdiction. It concluded that the FSIA precluded the court from reaching the merits of the case, reasoning that "there is no basis to overcome [Appellees'] presumption of immunity." The district court denied Can-Am's motion for reconsideration on November 23, 2004.

III

Can-Am appeals the district court's entry of final judgment dismissing its action for lack of subject matter jurisdiction after having found no exception to sovereign immunity applies to Appellees. Can-Am argues that Appellees are subject to jurisdiction under two exceptions to its sovereign immunity under the FSIA, the waiver exception and the commercial activity exception.

The existence of subject matter jurisdiction under the FSIA is a question of law which is reviewed *de novo*. *Stena Rederi AB v. Comision de Contratos del Comite Ejecutivo General del Sindicato Revolucionario de Trabajadores Petroleros de la Republica Mexicana S.C.*, 923 F.2d 380, 386 (5th Cir. 1991). The FSIA provides a framework for determining whether a court within the United States may exercise jurisdiction over a foreign state. The FSIA provides the sole basis for obtaining jurisdiction over a

foreign state in a court in the United States. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989). Under the FSIA, a "foreign state shall be immune from the jurisdiction of the courts of the United States and of the States" unless one of the several statutorily defined exceptions applies. 28 U.S.C. § 1604; *see Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488-89 (1983) ("When one of [the] specified exceptions applies, 'the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances.'") (citing 28 U.S.C. § 1606). The exceptions are enumerated in 28 U.S.C. § 1605.

Courts must apply the FSIA "in every action against a foreign sovereign, since subject matter jurisdiction in any such action depends on the existence of one of the specified exceptions to foreign sovereign immunity." *Verlinden*, 461 U.S. at 493. The party claiming FSIA immunity must establish a prima facie case that it satisfies FSIA's definition of a foreign state, thereby creating a presumption of immunity. *United States v. Moats*, 961 F.2d 1198, 1205 (5th Cir. 1992); *see also Keller v. Cent. Bank of Nigeria*, 277 F.3d 811, 815 (6th Cir. 2002); *Export Group v. Reef Indus., Inc.*, 54 F.3d 1466, 1470 (9th Cir. 1995). Then, the burden of production shifts to the non-movant to provide facts showing that an exception applies. *Moats*, 961 F.2d at 1205. To overcome a presumption of immunity, Can-Am must prove that the conduct that forms the basis of its complaint falls within one of the statutorily defined exceptions. *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 610-11 (1992); *see* 28 U.S.C. 1605 (exceptions to the jurisdictional immunity of a foreign state). Because it is undisputed that T&T is a foreign state and that the THA is T&T's instrumentality as defined in 28 U.S.C.

§ 1603, under the FSIA, they enjoy a presumption of immunity. Accordingly, the issue of subject matter jurisdiction turns on whether Can-Am rebuts the presumption of immunity enjoyed by T&T and the THA.

Two FSIA immunity exception provisions are at issue. The first is section 1605(a)(1), which discusses waiver. The second is section 1605(a)(2), which discusses commercial activity. It is Can-Am's burden to show that Appellees waived their immunity, or that Appellees' conduct that forms the basis of Can-Am's complaint is commercial activity as defined by the FSIA. A failure to satisfy the statute's exceptions deprives a federal court of subject matter jurisdiction. *Stena,* 923 F.2d at 386.

A. Whether T&T or the THA waived their immunity

Neither T&T nor the THA waived sovereign immunity with respect to the conduct upon which Can-Am's complaint stands, because the document containing the waiver clause was conditional, and the condition never occurred.

Subsection (a)(1) states:

> (a) A foreign state shall not be immune from the jurisdiction of the courts of the United States or of the States in any case (1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver[.]

28 U.S.C. § 1605(a)(1).

To be effective, a waiver of sovereign immunity must be either implicit or explicit. FSIA's "waiver exception is

narrowly construed." *Pere v. Nuovo Pignone, Inc.*, 150 F.3d 477, 482 (5th Cir. 1998).[6]

The district court held that the waiver of immunity rights in the Bower Cotton pay order was "ineffective" and "condition[al]." The district court stated:

> [T]he pay order was never executed because no [THA] funds ever transferred to the disbursement account. In fact, the transaction ended with the [THA]'s decision to withhold its funds. Without the transfer of funds, there is no transaction and therefore, no pay order. Hence, there is no waiver.

Can-Am disagrees with the district court's reasoning. It claims the waiver of immunity rights in the Bower Cotton pay order is a general express waiver. The gravamen of Can-Am's argument is that the pay order is by its own terms "valid upon the commencement of the start of the transaction herein," such that the transaction began with Charles's submission of the pay order, the letter of intent, and the letter of exclusivity. Can-Am therefore claims that the THA's "decision" to withhold funds was a breach of its "obligation" to fund.

In addition, Can-Am argues that the district court's assertion that "[n]o evidence has been proffered that the Chief Secretary ever approved the contract to fund the Bower Cotton proposal" is false. It refers to the letter of intent, saying that Charles "expressly approved the transaction" by signing it. Can-Am then makes the leap that Charles approved the "contract" through the letter of exclusivity by "granting the trade program manager/

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[6] Here, only an explicit waiver is at issue.

administrator/facilitator full exclusive right as our sole agent for 20 banking days . . . to enter the funds . . . in the best available bank-secured investment program." Thus, Can-Am maintains that a contract was formed through the THA's submission of these documents.

Finally, Can-Am takes issue with the notion that the waiver is conditional on the funding of the Bower Cotton proposal. Can-Am states, "[t]here is no language in the waiver provision or any other evidence before the district court that limits or conditions in anyway the explicit waiver." Can-Am focuses on the word "all" in the waiver clause found in the pay order:

> This document binds all parties, their employees, associates, transfers, assigns and/or designees. Any facsimile of this document shall be deemed as legal and binding on all parties hereto and shall be so construed to any court of law regardless of State, nation, or Province waiving *all* rights of immunity, regardless of whether diplomatic, sovereign or otherwise, which shall give this document full force and legal effect to true purpose and intent of this agreement as so construed by its signing parties.

(Emphasis added.) Thus, Can-Am argues that the waiver clause in the pay order is explicit and unconditional.

Appellees maintain that Can-Am's argument "is based on a strained interpretation of language in a document ostensibly prepared for a transaction that never occurred. . . . " They emphasize that without a transfer of funds in connection with the Bower Cotton proposal, there was no transaction. Without a transaction, there is no applicable waiver.

We agree with the district court that "the alleged waiver was a limited waiver." The waiver is contained in a document that references a specific investment transaction for which there is no contract. The waiver is limited in its scope, applying solely to the Bower Cotton proposal. The pay order specifically references the code designating the Bower Cotton proposal. The word "all" in the waiver clause is also conditioned on the funding of the Bower Cotton proposal. The payment authorized by the order is conditioned on the investment transaction, which in turn relied on the THA's approval of and signature on a contract between it and the bank. There was no investment transaction in relation to the Bower Cotton proposal. Sorsby's contingency fee depended on profits generated by an investment that was never made; the THA never signed a contract with a bank in relation to such an investment. The waiver clause exists within a document that specifically relates to an investment transaction which never transpired. Thus, the waiver of "all rights of immunity" also relates to the investment transaction which never transpired. We find that Appellees did not waive their sovereign immunity.

B. Whether T&T's/the THA's conduct fits the commercial activity exception

Foreign sovereigns are not immune from judicial process in actions based upon commercial activity that has a jurisdictional nexus with the United States, as defined by the FSIA. *Stena*, 923 F.2d at 386 (citing 28 U.S.C. § 1605(a)(2)). Because Can-Am's action is not based upon a commercial activity that has a jurisdictional nexus with the United States, Appellees remain immune.

In order to decide whether the commercial activity exception applies, first, the relevant activity must be identified. "This requires focusing on the acts of the named defendant, not on other acts that may have had a causal connection with the suit. In particular, we must isolate those specific acts of the named defendant that form the basis of the plaintiff's suit." *de Sanchez v. Banco Central de Nicaragua,* 770 F.2d 1385, 1391 (5th Cir. 1985) (citation omitted).

Second, the court must determine if the relevant activity is sovereign or commercial. The statutory definition of "commercial activity" is "either a regular course of commercial conduct or a particular commercial transaction or act." 28 U.S.C. § 1603(d).[7] The second sentence of § 1603(d) directs the courts to look at the "nature" of an activity rather than its "purpose" in determining whether it is commercial. Thus, the Supreme Court has defined an activity as having a commercial nature for purposes of FSIA immunity if it is of a type that a private person would customarily engage in for profit. *Weltover,* 504 U.S. at 614; *Callejo v. Bancomer, S.A.,* 764 F.2d 1101, 1108 n.6 (5th Cir. 1985). A foreign government's acts may be deemed commercial when that foreign government is not

[7] Courts have accepted that the circular definition for "commercial activity" in § 1603(d) was a mandate by Congress authorizing the courts to define the concept on an case-by-case basis. *See* H.Rep. No. 9401487, 94th Cong., 2d Sess. at 16 (stating that federal courts are given "a great deal of latitude in determining what is a 'commercial activity' " under the FSIA). The statute does give us some guidance, however, in approaching the task of distinguishing between sovereign and commercial activities, as discussed below.

acting "as a regulator of the market, but in the manner of a private player within it."[8] *Weltover,* 504 U.S. at 614.

Finally, if the relevant activity is commercial in nature, the court must determine whether it had the requisite jurisdictional nexus with the United States. A foreign state will not be immune in a case

> [a] in which the action is based upon a commercial activity carried on in the United States by the foreign state; or [b] upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or [c] upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States[.]

28 U.S.C. § 1605(a)(2). Any one of these connections with the United States, if met, provides a sufficient basis for jurisdiction. *Stena,* 923 F.2d at 386.

Stena further states, "[n]ot only must there be a jurisdictional nexus between the United States and the commercial acts of the foreign sovereign, there must be a connection between the plaintiff's cause of action and the commercial acts of the foreign sovereign." *Id. See also*

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[8] Courts have typically held that contracts for the procurement of goods and services are commercial rather than governmental in nature. *See United States v. Moats,* 961 F.2d 1198, 1205 (5th Cir. 1992) (contract for settlement agreement is commercial); *Rush-Presbyterian-St. Luke's Med. Ctr. v. Hellenic Republic,* 877 F.2d 574, 581 (7th Cir. 1989) (contract for purchase of medical services is commercial); *Practical Concepts, Inc. v. Republic of Bolivia,* 811 F.2d 1543, 1550 (D.C. Cir. 1987) (contract for developing rural areas is commercial); *Tex. Trading & Milling Corp. v. Federal Republic of Nigeria,* 647 F.2d 300, 310 (2d Cir. 1981) (contract for purchase of cement is commercial).

NYSA-ILA Pension Trust Fund v. Garuda Indonesia, 7 F.3d 35, 38 (2d Cir. 1993) ("In construing the commercial activity exception, courts have required that a significant nexus exist between the commercial activity in this country upon which the exception is based and a plaintiff's cause of action.") (citations omitted); *Moats,* 961 F.2d at 1205-06; *Vencedora Oceanica Navigacion, S.A. v. Compagnie Nationale Algerienne De Navigation,* 730 F.2d 195, 200 (5th Cir. 1984). The phrase "'[based upon'] is read most naturally to mean those elements of a claim that, if proven, would entitle a plaintiff to relief under his theory of the case." *Saudi Arabia v. Nelson,* 507 U.S. 349, 357 (1993). The court must therefore focus only on the conduct on which Can-Am's action is based. *Id.* at 356.

Can-Am's action is based on the appointment of Sorsby as financial consultant for Appellees and the MOU defining Sorsby's and the THA's responsibilities. It argues that the MOU is an enforceable contract for Can-Am's services. Thus, Can-Am argues that T&T and the THA are subject to jurisdiction under each of the three parts to the commercial activity exception.

1. Commercial activity in the United States

Section 1603(e) of the FSIA states: "A 'commercial activity carried on in the United States by a foreign state' means commercial activity carried on by such state and having substantial contact with the United States."

The district court held that Can-Am failed to present any evidence indicating that T&T or the THA carried on any activity that had substantial contact with the United States. It went on to state that none of the THA's relevant activities, including its appointment of Sorsby as its

financial consultant and its consideration of various financing and investment proposals, occurred in the United States. However, Can-Am disputes this conclusion, pointing to Sorsby's acts "as CEO of Can-Am, conducting financial consulting services for and on behalf of [Appellees], as their agent and financial consultant, in the United States." Can-Am invokes agency theory to meet the requirement that the requisite acts be those of the named defendant.

Appellees respond that Can-Am has not alleged anywhere that Appellees engaged in any commercial activity in the United States. Rather, they point out that all meetings between Can-Am and T&T or the THA occurred in either Trinidad & Tobago or London, and that all documents were signed in Tobago. Appellees also state that the THA "declined to participate in [an] alleged investment opportunity that would have required representatives to travel to New York and deposit funds in an unnamed bank there. . . . " Appellees do not respond to Can-Am's allegation that Sorsby was T&T's and/or the THA's agent, likely because Can-Am did not substantiate its theory.

In order for Can-Am's claim under this prong to survive, the commercial acts must be of the named Defendant. *De Sanchez,* 770 F.2d at 1391 (citation omitted). Can-Am argues that, as financial consultant, it acted as Appellees' agent and that its actions can be imputed to T&T and the THA.

Can-Am cites to *Weltover* to support its contention. But, as Appellees identified in their brief, *Weltover* does not conclude that the acts of the plaintiff within the United States may be attributed to the defendant to defeat

sovereign immunity. Rather, it is the acts of the foreign government that determine if the foreign sovereign's acts are "commercial" within the meaning of the FSIA. *Weltover,* 504 U.S. at 614-16.

The burden of proving an agency relationship, which would enable Can-Am to hold T&T and the THA liable, falls upon Can-Am. *See Walter Fuller Aircraft Sales, Inc. v. Republic of the Philippines,* 965 F.2d 1375, 1381 (5th Cir. 1992). "Our precedent . . . indicates . . . we look to the ownership and management structure of the instrumentality, paying particularly close attention to whether the government is involved in day-to-day operations, as well as the extent to which the agent holds itself out to be acting on behalf of the government." *Id.* at 1382 (citing *Hester Int'l Corp. v. Fed. Rep. of Nigeria,* 879 F.2d 170, 178, 181 (5th Cir. 1989)). The record does not support the allegation that Appellees, as the supposed principal to Sorsby's agent, had both the right to assign Sorsby's task and control the means and details of the process by which she would accomplish it. Can-Am did not meet its burden of proof in proving the existence of a principal-agent relationship between it and Appellees.[9]

Since Can-Am does not identify acts carried on in the United States having substantial contact with the United States by the named Appellees, we lack jurisdiction over

[9] Can-Am also points to Texas law, citing *Holloway v. Skinner,* 898 S.W.2d 793 (Tex. 1995), for the proposition that the acts of an agent on behalf of the principal are deemed to be the principal's acts. Even if we chose to rely on Texas law, Can-Am's argument would fail since it does not cite any facts to show it was controlled by T&T and the THA. *See Walker Ins. Servs. v. Bottle Rock Power Corp.,* 108 S.W.3d 538, 549 (App. Ct. Tex. 2003) (stating that the defining feature of the agency relationship is the principal's right to control the actions of the agent).

Appellees under this prong of the commercial activity exception.

2. Acts performed in the United States in connection with commercial activity elsewhere

Acts of a foreign sovereign in the United States in connection with foreign commercial activity may give rise to subject matter jurisdiction. *Stena,* 923 F.2d at 388. In *Stena,* the court held that the connection between the commercial activity and the plaintiff's complaint had to be material. *Id.* "Any material connection between 'commercial activity elsewhere' and the plaintiff's complaints . . . is irrelevant to the determination of subject matter jurisdiction." *Id.* at 388. The material connection must be between the act performed in the United States and the plaintiff's cause of action. *Pere,* 150 F.3d at 482.

The district court disposed of Can-Am's argument with regard to this prong in one sentence, which stated that "this prong does not apply because the facts do not identify a commercial act performed in the United States."

Can-Am argues we have jurisdiction because Sorsby traveled throughout the United States to meet and negotiate with potential investors, and that Sorsby was Appellees' agent, whose acts are imputed to Appellees. Appellees respond that since the proposed transaction with a third party never occurred, Can-Am cannot satisfy this prong of

the commercial activity exception requiring that an act be performed in the United States.[10]

Can-Am asserts that its financial consulting services are the "commercial act[s] performed in the United States." In the instant case, the material connection must exist between Can-Am's financial consulting services and Appellees' alleged breach of contract, fraud, or negligent misrepresentation. First, there is a question as to whether Sorsby's acts in the United States qualify as "commercial activities." There are no cases to support the notion that investigating potential investment options constitute commercial activity under the FSIA. Second, Can-Am's allegation that it acted as an agent of Appellees is not substantiated. Third, it is illogical that plaintiff's own acts create the required material connection underlying its cause of action, because, after all, Can-Am maintains that it met its end of the bargain. Can-Am does not assert that Appellees performed any other commercial activities within the United States that give rise to its cause of action.

Another possible basis for Can-Am's claim is its contingent fee based on the breach of an alleged contract entered into in Tobago. However, Can-Am's services were to be rendered in Tobago, and payment of Can-Am's contingent fee was to be paid, not from the United States, but from profits (if any) of the alleged investment program held in a Swiss bank. Therefore, we have no jurisdiction under this prong of the commercial activity exception.

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[10] Appellee's brief also correctly notes, "In fact, Can-Am fails to allege in its Amended Complaint that either T&T [or the] THA has conducted any commercial activity anywhere."

3. Commercial activity outside the United States that has a direct effect in the United States

Finally, Can-Am argues that "the [Appellees'] breach caused a direct effect on the United States" because Sorsby, an American citizen and CEO of an American company, expected to be compensated for her work in the United States. The only direct effect claimed by Can-Am is the financial loss to Sorsby from Appellees' alleged breach.

The Supreme Court addressed the "direct effect" exception in *Weltover,* 504 U.S. 607 (1992). In *Weltover,* the plaintiffs held certain Argentine bonds. These bonds required Argentina to make payment of principal and interest to bondholders in U.S. dollars. Payment could be made through transfer on the London, Frankfurt, Zurich, or New York market, at the election of the creditor. When the bonds began to mature, Argentina unilaterally extended the time for payment and offered bondholders substitute instruments. The plaintiffs, two Panamanian corporations and a Swiss bank, refused to accept the rescheduling and insisted on full payment, specifying New York as the place where payment should be made. The plaintiffs then brought suit in the U.S. District Court alleging that Argentina's failure to pay the bonds according to the original terms was a breach of contract. Jurisdiction was alleged under section 1605(a)(2) of the FSIA. The plaintiffs argued that Argentina's refusal to make payment caused a "direct effect" in the U.S. because payment that was supposed to have been made in New York was not made. The Supreme Court agreed. The Supreme Court stated that "an effect is 'direct' if it follows 'as an immediate consequence of defendant's . . . activity.'" *Weltover,* 504 U.S. at 618 (citation omitted). After noting that the plaintiffs had designated their accounts in New

York as the place of payment, the Court concluded, "Because New York was thus the place of performance for Argentina's ultimate contractual obligations, the rescheduling of those obligations necessarily had a 'direct effect' in the United States: Money that was supposed to have been delivered to a New York bank for deposit was not forthcoming." *Id.* at 619.[11]

We agree with the district court that Can-Am's losses in pursuit of an acceptable investment opportunity for the Appellees are not enough to meet this prong of the commercial activity exception. Even if Can-Am did provide evidence of its financial losses, this prong still would not be met. It is undisputed that neither T & T nor the THA ever transferred money in connection with any alleged investment opportunity identified by Can-Am; hence, the type of activity found to be commercial in *Weltover* and other cases is absent here. Can-Am's alleged financial loss in the United States in and of itself is not enough to meet this prong of the commercial activity exception.

IV

Neither the waiver exception nor the commercial activity exception to the FSIA apply to Appellees. While the THA did include a waiver clause in the pay order, the pay order was conditioned on a transaction that never

[11] Other examples of direct effect include when a defendant agrees to pay funds to an account in the United States and then fails to do so, *Voest-Alpine Trading USA Corp. v. Bank of China*, 142 F.3d 887, 896 (5th Cir. 1998), and where a defendant's default on a letter of credit for which plaintiff had designated payment to its bank account in New York, *Hanil Bank v. PT. Bank of Negara Indonesia*, 148 F.3d 127, 132 (2d Cir. 1998).

occurred, and the waiver itself never went into effect. Further, Appellees did not perform any commercial activities in the United States, nor did they perform any commercial activities in the United States with a material connection to the conduct that forms the basis of Can-Am's complaint. Finally, Appellees did not perform any commercial activities outside the United States that had a direct effect in the United States. Because no exception under the FSIA applies, Appellees are entitled to sovereign immunity. We AFFIRM.

APPENDIX B

[SEAL]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CAN-AM INTERNATIONAL, L.L.C., *Plaintiff,*	§	
v.	§	C. A. NO. H-01-3897
THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE TOBAGO HOUSE OF ASSEMBLY, *Defendant.*	§	

FINAL JUDGMENT
(Filed Sep. 08, 2004)

Pursuant to the Memorandum and Order entered in this case, the plaintiff shall take nothing by this suit because the Court lacks subject matter jurisdiction.

This is a FINAL JUDGMENT.

Signed this 8th day of September, 2004.

/s/ Kenneth M. Hoyt
KENNETH M. HOYT
United States District Judge

[SEAL]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CAN-AM INTERNATIONAL, L.L.C.,	§	
Plaintiff,	§	
v.	§	C. A. NO. H-01-3897
THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE TOBAGO HOUSE OF ASSEMBLY,	§	
Defendant.	§	

MEMORANDUM AND ORDER
(Filed Sep. 08, 2004)

I. INTRODUCTION

This is a contract action wherein the plaintiff asserts state law causes of action for breach of contract, fraud, negligent misrepresentation, and promissory estoppel against a foreign state. The plaintiff, Can-Am International, L.L.C., is an American company registered in the state of Texas. Laura Lee Sorsby is its founder and CEO. The defendants are the Republic of Trinidad and Tobago and its political subdivision, the Tobago House Assembly. Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the defendants have submitted motions for summary judgment. Having considered each party's submissions, the Court is of the opinion that subject matter jurisdiction

does not exist.[1] Accordingly, the Court concludes that this case should be DISMISSED.

II. HISTORY

The Republic of Trinidad and Tobago ("Republic") is comprised of two islands in the Caribbean Sea near Venezuela. After achieving independence from Great Britain in 1962, the Republic central government established the Tobago House of Assembly ("House") to administer Tobago Island. It is undisputed that the Republic is a foreign state and that the House is a Republic instrumentality. Responsibility for the House Office of Chief Secretary includes planning Tobago Island development projects. At all relevant times, the House Chief Administrator or Chief Secretary was either Allan Richards ("Richards") or Hochoy Charles ("Charles").[2]

In 1998, Laura Lee Sorsby ("Sorsby") initiated contact with the House Office of Chief Secretary and offered her services as a financial consultant. She learned that the House needed financing for various development projects.

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[1] While the pleadings and the plaintiff's response to the defendants' motion to dismiss for lack of subject matter jurisdiction initially indicated proper jurisdiction, the Court could not perceive an actual lack of subject matter jurisdiction until the parties conducted further discovery.

[2] The position's actual title or who held it at what particular time does not affect the case's disposition. The Court notes, however, that the dates and titles from the parties' submissions do not coincide. *See*, Defs.' Mem. Mot. Summ. J. Doc. 86, p. 3 (Charles referred to as House Chief Sec'y in Jan. 1998); p. 4 (Richards as Chief Admin. in Nov. 1998); Pl.'s Mem. Mot. Summ. J. Doc. 99, p. 4 (Richards as Chief Admin. in Mar. 1998); p. 5 (Richards as Chief Sec'y in Nov. 1998); and p. 6 (Charles as Chief Sec'y in Feb. 1999).

Shortly thereafter, Sorsby incorporated Can-Am International, L.L.C. ("Can-Am") and began submitting finance proposals to the House. None of the proposals were accepted. In early 1999, however, Chief Secretary Charles allocated House office space to Sorsby and formally appointed her to be the House's financial consultant. On March 27, 1999, the parties executed a Memorandum of Understanding in Tobago.[3] The Memorandum recites that the House is considering three projects for financing and that Sorsby is the House's "Financial Consultant" with authority to oversee the financing process. In relevant part, the Memorandum fee clauses provide that the:

> House agrees to pay the Financial Consultant a fee equal to ten percent (10%) of all monies earned from the private placement (or other funding programs) out of funds provided to the House generated by the funding program arranged by the Financial Consultant. . . .
>
> . . .
>
> In the event that the House selects a form of conventional financing from the financing structures submitted by the Financial Consultant, the parties shall negotiate . . . a fee agreeable to both parties to compensate the Financial Consultant for the services in arranging such financing.

Regarding duration, the Memorandum provides that "[t]his Memorandum shall remain in effect as long as the House is receiving funds through any trading programs or

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[3] The MOU states that it is between the House and Sorsby rather than the plaintiff, Can-Am. The Court has not decided whether the party designation was part of an on-going misrepresentation or merely a drafting error.

financial arrangements provided by the Financial Consultant." Finally, the Memorandum has a choice of law provision that selects Republic law as the basis for governance and construction.

In April 1999, Sorsby arranged for House officials to travel to London, England for a series of meetings where various individuals presented investment opportunities for the House's consideration. One proposal came from a London firm called the Bower Cotton Group. Upon returning to Tobago, the House Chief Secretary received and executed various documents related to the Bower Cotton proposal including a letter of intent and an Irrevocable Pay Order ("pay order").[4] The letter of intent provides that the House Chief Secretary is "willing and able to enter Ten Million US dollars for participation into a private bank-secured investment programme, subject to my [the Chief Secretary's] approval of the contract." The pay order provides that Sorsby, in her individual capacity, will receive "[a] total of 10% (Ten Percent) of the net disbursable profits received by [the House] or any Company on their behalf to facilitate the investment transaction. . . . " The pay order also includes a waiver of immunity rights, and it submits the transaction to governance under the International Chamber of Commerce Rules of Conciliation and Arbitration.

Despite Sorsby's recommendation to accept the Bowers Cotton proposal and a letter from her stating that there was a short window of time to decide, the House

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[4] The plaintiff submitted a "letter of intent" at Doc. 100, tab 7. That letter of intent, however, is not the same as the letter that the plaintiff submitted with Doc. 14 in reference to the Bower Cotton proposal and the defendant's alleged immunity waiver.

declined to fund the Bowers Cotton proposal. Undeterred, Sorsby continued to submit investment proposals, and the House rejected them all. On March 7, 2000, Sorsby revealed her frustration with the House's resistance in a letter to the Chief Secretary. In addition to stating that she was "upset," she remarked "I have always tried to get you what you need, lawyers, funding, etc., and have not ever charged you a dime." In response, the House agreed to consider several more proposals but refused them as well.

In November 2001, Sorsby instituted this action on Can-Am's behalf. Can-Am contends that the Memorandum was a contract and that the House breached it by not funding any of the investment proposals. In addition to denying the existence of any enforceable contract, the Republic and the House contend that their undisputed status as a foreign state precludes subject matter jurisdiction without exception. In response, the plaintiff avers that the letter of intent, executed in concert with the Bowers Cotton proposal, waives immunity and that, in the alternative, the "commercial activity" exception applies.

III. SUBJECT MATTER JURISDICTION

The law requires the Court to maintain subject matter jurisdiction at all times. *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1207 (5th Cir. 1992). Any party or the court can raise issues of subject matter jurisdiction at any time. FED. R. CIV. P. 12(h)(3). With regard to foreign states, maintaining subject matter jurisdiction is particularly important because, unlike other litigants, foreign states are immune from jurisdiction in United States courts. *See* 28 U.S.C. § 1604. Immunity is not merely the right to avoid

liability; it also includes the freedom to remain exempt from the burdens of the judicial process. *See Kelly v. Syria Shell Petroleum Dev. B.V.*, 213 F.3d 841, 849 (5th Cir. 2000). In observance of comity, the United States grants foreign states a presumption of immunity. *See Conn. Bank of Commerce v. Republic of Congo*, 309 F.3d 240 (5th Cir. 2002). The presumption of immunity, however, may be rebutted in accordance with the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1602 *et seq.* ("FSIA"). The FSIA applies to foreign states and their political subdivisions. *Id.* at § 1604. Can-Am does not dispute that the Republic is a foreign state and that the House is its political subdivision. Accordingly, the issue of subject matter jurisdiction turns on whether the FSIA rebuts the presumption of immunity enjoyed by the Republic and the House. Based on the facts before the Court, only two FSIA immunity exception provisions apply to this case. The first is section 1605(a)(1) ("waiver"). It applies to a foreign state that "has waived its immunity either explicitly or by implication, not withstanding any withdrawal of the waiver which the foreign state may purport to effect, except in accordance with the terms of the waiver[.]" *Id.* at § 1605(a)(1). The second is section 1605(a)(2) ("commercial activity"). A discussion on the commercial activity exception is below.

Citing the FSIA's waiver provision, Can-Am contends that no immunity exists because the House executed a pay order agreement that contained a waiver clause. After a thorough review, the Court finds that the alleged waiver is ineffective. The evidence before the Court clearly demonstrates that the House executed the alleged waiver in concert with the Bowers Cotton Group transaction. The documents for that transaction each use the reference

code: "House/9904-001." The alleged waiver is a clause within the unique pay order document for the transaction. In addition to identifying the specific transaction to which the pay order applies, the pay order explicitly states that "[u]pon execution of this agreement, this Irrevocable Payment Order will be executed, following settlement and clearance of funds into the Disbursement Account for the first and subsequent tranches[5]." Accordingly, the pay order was never executed because no House funds ever transferred to the disbursement account. In fact, the transaction ended with the House's decision to withhold its funds. Without the transfer of funds, there is no transaction and, therefore, no pay order. Hence, there is no waiver.

In fact, the alleged waiver was a limited waiver. The waiver applied only in the context of the Bowers Cotton transaction. The Court observes that the waiver is conditional. It's validity is conditioned on the funding of the Bowers Cotton proposal. That did not occur. Recall that the proposal's letter of intent explicitly states that the House's participation is ultimately subject to the Chief Secretary's approval of the contract. No evidence has been proffered that the Chief Secretary ever approved the contract to fund the Bowers Cotton proposal. In fact, the Chief Secretary's decision to withhold funding demonstrates the opposite. Hence, the Court finds that the Republic and the House have not waived their immunity under the FSIA section 1605(a)(1).

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[5] *Tranche*: "A bond issue derived from a pooling of similar debt obligations." Black's Law Dictionary 1503 (7th ed. 1999). The Bowers Cotton proposal was an attempt to pool a potential House investment with other investments to purchase an initial tranche.

Turning to the FSIA section 1605(a)(2), the Court has reviewed the parties' submissions and finds that the commercial activity exception does not apply to the Republic or the House. The commercial activity exception has three prongs. The first creates an exception of a foreign state carries on a commercial activity in the United States. 28 U.S.C. § 1605(a)(2). Section 1603(e) defines commercial activity. It provides that "[a] commercial activity carried on in the United States by a foreign state means commercial activity carried on by such state and having substantial contact with the United States." 28 U.S.C. § 1603(e).

Can-Am has failed to present any document indicating that the Republic carried on any activity having substantial contact with the United States. The House's relevant activities included appointing Sorsby as its financial consultant and, thereafter, considering various investment proposals. However, none of these activities occurred in the United States. The House appointed Sorsby in Tobago and provided an office for her Tobago. The House also negotiated and executed the Memorandum in Tobago. No facts in the record indicate that the House considered any proposals in the United States. The record does, however, reflect that Sorsby arranged for proposals to be considered in England. Moreover, the record reflects that the House declined an opportunity to consider a proposal in New York. In sum, it is clear that no commercial activity occurred in the United States.

The second commercial activity prong creates an immunity exception if the action is based "upon an act performed in the United States in connection with the commercial activity of a foreign state elsewhere[.]" *Id.* Again, this prong does not apply because the facts do not identify a commercial act performed in the United States.

Finally, the third commercial activity prong precludes immunity when an action is based "upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States[.]" *Id.* The plaintiff alleges that the Republic and the House breached a contract to allow Sorsby to act as the House's financial consultant. Even if the Court allows that the Memorandum was a bona fide contract, it explicitly limits Sorsby's compensation to ten percent of monies earned from funding programs. The evidence fails to demonstrate that any monies were earned. In fact, Can-Am's contract claims arise from the House's decision not to fund the investment proposals that she presented. Considering that the House was never bound to accept any proposal, the fact that Sorsby did not make money on *her* investment is not a legitimate basis for a breach of contract claim. In any event, the House's unfettered decision to decline investment opportunities that could have enured to the plaintiff's benefit in this Country is certainly not a basis to assert that the Republic and the House caused a direct effect in the United States.

IV. CONCLUSION

In light of the discussion above, the Court finds that there is no basis to overcome the Republic and House's presumption of immunity. Accordingly, the Court lacks subject matter jurisdiction and this case must be DISMISSED.

It is so ORDERED.

Signed this 8th day of September, 2004.

/s/ Kenneth M. Hoyt
KENNETH M. HOYT
United States District
Judge

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20007

CAN-AM INTERNATIONAL, LLC

Plaintiff-Appellant

v.

THE REPUBLIC OF TRINIDAD & TOBAGO; TOBAGO HOUSE OF ASSEMBLY

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas, Houston

ON PETITION FOR REHEARING

(Filed Mar. 30, 2006)

Before GARWOOD, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

/s/ Edward C. Prado
United States Circuit Judge

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CAN-AM INTERNATIONAL, L.L.C.	§	
Plaintiff,	§	**Case No.: H-01-3897**
v.	§	
THE REPUBLIC OF TRINIDAD AND TOBAGO and the TOBAGO HOUSE OF ASSEMBLY	§	**Hon. Judge Kenneth M. Hoyt**
Defendants.	§	

AFFIDAVIT OF LAURA LEE SORSBY

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Laura Lee Sorsby, known to me to be a credible person, who is known to me and who, being first duly sworn, upon her oath stated as follows:

1. "My name is Laura Lee Sorsby. I am over twenty-one (21) years of age, of sound mind and have never been convicted of any felony. I have personal knowledge of the facts stated herein and they are true and correct.

2. I have extensive experience with international financing arrangements as evidenced by the following letters of recommendation and other various documents:

a. Letter of recommendation from Bell & Murphy, L.L.C. incorporated hereto as Exhibit "A";

b. Invitation to join as Advisory Board member of USIACC incorporated hereto as Exhibit "B";

c. Letter of recommendation from Ms. Sermin Bahsis incorporated hereto as Exhibit "C";

d. Letter of recommendation from Zena International, Inc. incorporated hereto as Exhibit "D";

e. Letter of recommendation from Darinco Enterprises incorporated hereto as Exhibit "E".

3. In early 1997, through contacts in Houston, Texas at Shell Oil Company, I was introduced to representatives of the government of Trinidad and Tobago ("T&T"). At the request of T&T, I submitted my credentials to the Minister of Foreign Affairs, Ralph Maraj. In March 1997, I and other representatives of Can-Am, met with Mr. Finbar Gangar, Minister of Energy and Energy Industries at the time. At the meeting, discussions focused on funding programs for infrastructure financing for "Petrotrin", the Petroleum Company of Trinidad and Tobago Limited. Meetings between representatives of Can-AM international, Inc. ("Can-Am") which is a company I created in connection with some of my financial consultant activities, and representatives of Petrotrin continued well into the year 2000. I and other representatives of Can-Am, continued to meet with Mr. Rommel Charles, Colin Lucas and others from Port Authority until well into the year 2000. I and/or representatives of Can-Am, had meetings with Reeza Mohammed, the

Minister of Works and Transportation, and Mr. Ganga Singh, whom Can-Am understood to be the Minister of Telecommunications.

4. In 1998, I began marketing my services as a financial consultant to the Trinidad and Tobago. I met with representatives of T&T and THA, including Allan Richards, Chief Administrator of the Tobago House of Assembly ("THA"), in 1998. At about the same time, I was introduced to and begun [sic] working closely with Rennie Dumas, the business analyst for the THA. They requested that I send them information about Can-Am International, Inc. I provided such information, along with other information showing my credentials. This included my work with Cathay Consortium Limited, and the government of Malaysia.

5. On February 22, 1999, Hochoy Charles of the Tobago House of Assembly appointed me, as chief executive officer of Can-Am, as financial consultant for certain improvement projects. THA represented to Can-Am that it intended to proceed with the capital improvement projects with the participation of Can-Am. Can-Am relied on these representations to its detriment.

6. In my capacity as financial consultant, I reviewed numerous funding proposals for the benefit of the THA, including proposals from Global Strategies and Cathay Group. Altogether, I brought no less than 6 financial structures to the THA. However, in each instance, the THA, in violation of its responsibilities under the Memorandum of Understanding ("MOU"), failed to provide information, or to take appropriate actions, to complete the transaction. For instance, Can-Am proposed conventional financing with the Bank

of Montreal, but the THA failed to deliver a promised guarantee for the central government as collateral. Can-Am proposed revenue bond issues through both Raymond James and Gee and Jenson, but the THA failed to provide requested information to either group. Can-Am proposed funding through OPIC, but the THA failed to complete the application form.

7. One proposal that was apparently submitted directly to the THA came from a Jeffrey Matz. I rejected that proposal and recommended that the THA not pursue it. I have never met Jeffrey Matz. I have never had any dealings with him, and I have never done any business with him.

8. I contacted Hugh Hague, with whom I had worked before, to assist me in my efforts. Mr. Hague resides in Calgary, Canada, and is the president of Global Strategies, Inc. He also is a representative of Nikea, N.V. ("Nikea") in North America.

9. Nikea had an arrangement with a construction financing group and was contracted with a trading group that provided financing to underdeveloped countries. The fund manager for the investment/trading group was named Peter Newton. I presented the projects to Mr. Newton for the approval of his group.

10. The investor group required that I submit the projects to them for approval before they would agree to provide a commitment of any monies into a trade that would create financing for the THA. I submitted the projects to the investor group, and they were approved.

11. This Nikea proposal was submitted to Bower Cotton's client, the investment/trading group being managed by Peter Newton. The investment was very favorable to the THA because they would remain in an account over which the THA had sole signature authority. Moreover, the funds were to be backed by a bank guarantee. Finally, the return from this program would have been substantial. The program explained to us in London by Peter Newton required an investment of $100 million. I arranged a philanthropist willing to plead $100 million to the program for T&T and THA providing THA pledged 10% or $10 million to show their own good faith in the projects. Peter Newton arranged for this funding program to be arranged in Switzerland. Peter Newton was instructed to probe the THA bank account to provide the funds were on deposit as the requirement of the philanthropist.

12. In March of 1999, I recommended the Peter Newton/Nikea proposal to the THA. Accordingly, I arranged a meeting in London between myself, Mr. Newton, representatives of the THA, and others to discuss the proposal deal. We met at the offices of the Bower, Cotton firm.

13. About that time, I was contacted by Steven Vasak who had a proposal he wanted to make. He offered to come to London, at his own expense, and make his proposal to us while we were all in London. Mr. Vasak did so. However, I rejected Vasak's proposal, and recommended that the THA not pursue it. I have never had any other dealings with Mr. Vasak.

14. The THA representatives were impressed with the Peter Newton/Nikea proposal, and stated

their confidence in Mr. Newton. Accordingly, we proceeded with that proposal.

15. To go forward with the Peter Newton/Nikea proposal, I told Hochoy Charles that he needed to execute a letter of intent, a proof of funds letter, and signed and notarized pay orders. Hochoy Charles executed each of these documents with transaction codes specific to this transaction. Furthermore, Charles agreed to proceed with the Peter Newton/Nikea funding program, and agreed to invest $10 million into the trading program.

16. However, prior to the time that the Bower Cotton investor group was to invest its funds, it caused a bank probe to be performed which revealed that the THA funds had not been invested as promised. Because the THA reneged on its commitment to invest the funds, the funding program was lost.

17. I understand that the money that was intended to be invested by the THA into the funding program was redirected.

18. Can-Am continued to seek funding opportunities for THA and T&T with its knowledge and authorization. In July of 1999, I contacted THA concerning a funding program proposal from Gee & Jenson. On July 30, 1999, Allan Richards wrote to me to set up a meeting with representatives of Gee & Jenson. In August of 1999, I and two other representatives of Gee & Jenson met with Hochoy Charles and Allan Richards in Tobago. After that meeting, Hochoy Charles also asked me to assist in locating a ferry and arranging financing for its purchase. Mr. Elton Bobb of THA and I spent several days in Tobago gathering

information needed to solicit proposals for the ferry project. Beginning in August 1999, Can-Am was also pursuing potential funding programs through proposals made by Raymind [sic] James and Frankwell Investments. I was also communicating with Port Authority, regarding funding programs to financing port upgrades, and the Minister of Energy and Energy Industries regarding the Raymond James proposal. Throughout early 2000, I and a government representative worked together to set up meetings in Tobago to consider the funding programs being proposed by Raymond James and Frankwell Investments. I was also invited to the Global Friendship Forum as a guest arranged by Petrotrin, the government of Trinidad & Tobago's state owned company for infrastructure finance convention. In meantime, I continued my efforts to secure funding proposals for the ferry project. On March 16, 2000, Allan Richards issued a formal invitation for the meetings scheduled in Tobago for Raymond James and Frankwell Investments. During the same time period, the Chairman of the Port Authorities wrote to me requesting a funding program proposal by Raymond James, I and representatives of Raymond James and Frankwell Investments met with Hochoy Charles and other government representatives in April of 2000. However, after once again agreeing to go forward with a program, the government refused to provide the requested information to Raymond James to proceed with funding program proposal.

19. In 1999, I and Mr. Hague, a representative of Can-Am, moved to Trinidad & Tobago so that we would be more accessible to the THA. While in Tobago, we worked on the from and terms of the MOU and conducted meetings to discuss the requirements of

the private-placement funding program proposed by Bower Cotton. During that time, the local telephone number for Can-Am in Houston with Janice Cleavinger, the attorney who incorporated Can-Am and its registered agent.

20. As late as January 24, 2000, I was still soliciting and presenting funding proposals to T&T and THA. THA continued to do business with me and at no time did T&T, THA or any other government representative, ever cancelled [sic] my agency appointment and revoke the MOU.

21. It is my understanding that Dr. Steve Onoja and Benjamin Okpah [sic] are ministers. The address given in the Can-Am Articles of Incorporation for these individuals is to their church, which I understand to be their proper place of business. It was not my intention that Dr. Onoja and Mr. Okepah be included as managers of Can-Am when it was created. Accordingly, they were removed from any involvement with Can-Am at its first organizational meeting.

22. My married name was "Dorenbach." Subsequent to my divorce, I reverted to my maiden name, "Sorsby."

23. In the affidavit of Allan Richards, he describes an incident wherein the THA had been victimized by a group known as The Financial Consortium ("FiCon"). I did not have any involvement in that transaction. My understanding, however, is that it involved a situation where the THA transferred a substantial sum of money into the account of a third party.

24. Hochoy Charles asked me, in my capacity as a consultant for the THA, to assist him in locating the individuals who had taken the THA's funds,

and to locate counsel in the United States to bring a claim against FiCon. I recommended Robert McGrath through his wife. My understanding is that Mr. McGrath associated with counsel in Florida and assisted in prosecuting the FiCon matter to a successful conclusion on behalf of the THA.

25. I have expanded a substantial amount of effort and funds in my capacity as the Financial Consultant for the T&T and THA, and I invested a significant amount of time. However, I have not received any payment whatsoever from the T&T and/or THA. As a result of T&T and THA's wrongful conduct, Can-Am has suffered damages in excess of 10 million dollars, and out of pocket expenses in excess of $1.2 million.

FURTHER AFFIANT SAYETH NOT.

/s/ Laura Lee Sorsby
Laura Lee Sorsby

SUBSCRIBED AND SWORN TO BEFORE ME to certify which witness may hand and seal of office this 24th day of May, 2004.

[SEAL] COLLEEN AUSTIN
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
SEPT. 20, 2005

/s/ Colleen Austin
Notary Public,
State of Texas

[LOGO] Bell & Murphy
AND ASSOCIATES, LLC
5310 Harvest Hill Rd. • Suite 139 • LB 174 •
Dallas, TX 75130-5805
t 972-386-0752 f 972-386-5313
e www.bellandmurphy.com

April 26, 2004

Can Am International L.L.C.
Laura Lee Sorsby,
Houston, Texas

To Whom It May Concern:

Please be advised that Bell & Murphy and Associates, Exploration Consultants has been doing both domestic and international oil and gas exploration projects since 1964.

We have been closely associated with Ms. Laura Lee Sorsby, Managing Director with Can Am International L.L.C. since 1998 with projects in Malaysia, Indonesia, Russia, Somaliland Africa, Turkey, Japan, Oman and China.

Most recently Bell & Murphy and Laura Lee Sorsby, Can Am International, consummated a crude oil procurement Mandate Agreement with a Texas based refinery for international oil and gas allotments.

If you have any question, or if additional information is needed please do not hesitate to contact our offices in Dallas, Texas.

Regards,
BELL & MURPHY AND ASSOCIATES, L.L.C.

/s/ James A. Carroll
JAMES A. CARROLL P.C. [SEAL]
MANAGING DIRECTOR

[LOGO]

US INDIAN AMERICAN
CHAMBER OF COMMERCE
Washington DC
New York Office – 1979, Marcus Avenue,
Suite 210, Lake Success, New York 11042
Tel – 516 622 2322 Fax – 309 273 3672
www.usiacc.com

Ms. Laura Lee Sorsby,
Director,
Can-Am Investment Group, L.L.C.
Houston, Texas

02-23-2004

RE: Invitation to Join as Advisory Board Member of USIACC

Dear Laura,

USIACC is a non-profit forum with a Voice of Indian Business Community to the US Government and Policy-makers for getting a Fair share in the Grants, Jobs and Contracts for the Indian Business Community.

It gives me great pleasure to invite you to Join as advisory Board Member of USIACC.

Please sign below this letter as your acceptance to Join.

Best Wishes

Mickey Kalra
National President

Accepted to Join

/s/ Laura Lee Sorsby
(Surinder Rametra)
Date-02-23-04
Place – Houston

D14

12.07.2002

To Whom Concerned

Dear Sir

Laura Lee Sorsby was has been doing business and promoting business between Turkey and the United States, as well as in Oman and Russia. Ms. Sorsby has tried to promote business in our country to establish a large international markets for American firms and manufacturers in our region. Ms. Sorsby, the appointed Mandate for Age Refinery in San Antonio, Texas, Ms. Sorsby has been promoting Age Refinery in Turkey and the Middle East in order to supply oil and gas to the USA from the Middle East. Age Refinery is currently supplying jet fuel to the United States Military. Ms. Sorsby has always been honest and shown integrity in all business dealings.

As a financial mandated agent of many European groups, I appreciate Ms. Sorsby as being professional and trustworthy in all transactions.

Best Regards

Sermin Bahsis

/s/ Sermin Bahsis
Cell: 90 532
Tel: 90 216 3687924
Fax: 90 216 3683495

att: CV of Sermin Bahsis

SERMIN BAHSIS [LOGO]

ADDRESS/PHONE

Home : Hurriyer Kutlutas Sitesi B Blok D 31
Kozyatagi Istanbul Turkey

Residence : ☎ 90 (216) 368 79 24

Mobile : 90 (532) 265 74 47

Fax : 90 (216) 368 34 95

E-mail : sermin@atlat.net.tr

BIRTH DATE/PLACE

- ✓ 10.01.1961
- ✓ Adana

MARITAL STATUS

- ✓ Single

AREAS OF EXPERTISE

- ✓ Management of International Trade (Market Research, Organization, Marketing, Operation
- ✓ Management of Interdisciplinary Professionals (Financial, Marketing, Operation and Training)
- ✓ Management of coordination in Stock Exchange Market

PROFESSIONAL SKILLS

Management

- ✓ Staff development and training
- ✓ Seminar planning and presentation
- ✓ Performance appraisal and coaching

Marketing Management

- ✓ **Market, Research, Analysis and Strategy Generation**
- ✓ Competitive Pricing and Cost Analysis
- ✓ Product Presentation, Customer Relations and Loyalty Development

Financial Management

- ✓ **Financial and Operational Data Analysis**
- ✓ Credit Risk Evaluation
- ✓ Stock Exchange Operation

EDUCATION

- ✓ **MBA – Manchester School University of Whales (frozen)**
- ✓ Bachelor of Science (BS) Economics
- ✓ Bosphorous University
- ✓ Saint Benoit – French School

MAJOR POST GRADUATION STUDIES

- ✓ **UBS (1988) Seminar on Methods of Security Performance and Payment in International Trade**
- ✓ Midland Bank International London (1989) – Finance and Lending Interpretation at Balance Sheets, Foreign Exchange and International Capital Markets, Export Finance, Documentary Letters of Credit, Bank Guarantees
- ✓ CIBS – Center for International Banking Studies-Istanbul
- ✓ Assets Liabilities Management (1992) Financial Analysis
- ✓ Various courses given by Turkish Foreign Trade Bank (Credits, International Trade Products, Imports, Stock Exchange Market, Bonds, Guarantees etc.)

EXPERIENCE

30.04.2002-present : Mandated Marketing Agent of financials institutions

08.08.2001- 30.04.2002	: Dizayn Group Marketing Coordinator in Europe & America Swiss Company – General Manager
01.02.2000- 08.08.2001	: International Trade (petroleum, wheat flour, sugar..) trade financing, market research, etc
01.09.1997- 01.02.2000	: Arctech Group Arctech Welding Electrodes, Welding Wires Industry Inc Export Management Pera Finansal Kiralama Hizmetleri AS (Leasing) **General Manager** Pera Faktoring Hizmetleri AS (Factoring) General Manger
1.02.1996- 31.08.1997	: Evgin Menkul Degerler As (Stock Exchange) Inspection & Coordination
01.04.1995- 31.01.1996	: Gedik Menkul Kiymetler As (Stock Exchange) Kadikoy Branch Manager
01.01.1995- 31.03.1995	: Turkish Foreign Trade Bank Ciftehavuzlar Brach [sic] Manager
01.04.1994- 31.12.1994	: Turkish Foreign Trade Bank (DISBANK) Karakoy Branch – Acting Manager
01.04.1990- 31.03.1990	: Turkish Foreign Trade Bank (DISBANK) Karakoy Branch – Credit Marketing Department Pro-Assistant Manager-Assistant Manager
01.05.1986- 01.04.1990	: Turkish Foreign Trade Bank (DISBANK) Training Department

ACTIVITIES

- ✓ Sports (Tennis, Ski)
- ✓ Music (Piano)

LANGUAGES

- ✓ English
- ✓ French

[LOGO] **ZENA**
International, Inc.

Tel: (706) 561-2500569-3025

P.O. Box 9512 Fax: (253) 679-5907
Columbus, GA 31908-9512, USA
E-mail: ZENA.Inc@Home.com
Web Page: WWW.ZENAINTL.COM

To whom it May Concern

July 15, 2002

Reference: Ms. Laura Sorsby, Can-Am International L.L.C.

Dear Sirs:

I have a great pleasure to write on behalf of Ms. Laura Lee Sorsby of Can-International, L.L.C., an American Consulting Group, Houston, Texas. I have known Laura Lee Sorsby for several years and we have been involved in entrepreneur projects such as crude oil, refined petroleum products as well as structuring finance for infrastructure projects.

She has been open, flexible and honest in conducting a successful business. She is prompt, precise and direct to the point. She is energetic and a capable individual who is able to turn projects into success. I enjoyed working with her, her partners and staff over the years and I am looking forward to doing many more exciting projects in the future.

For more information, please do not hesitate to write or call.

/s/ Zeki Al-Saigh Zeki Y. Al-Saigh
[SEAL] President

Resume

Dr. Zeki Y. Al-Saigh

NAME: Zeki Y. Al-Saigh

MEMBERSHIP: American Chemical Society, Royal Society of Chemistry, Alpha Chi Sigma, Alpha Lambda Delta, and Chi Beta Phi

Degrees

Ph.D. Physical Chemistry, 1973, University of Birmingham, U.K.

B.S. Chemistry, 1967, University of Mozul

Experience

– 1998 President, ZENA International, Inc., Columbus, GA, International trading in crude oil, refined petroleum products, Environmental Chemical testing and consulting

– 1998 Co-partner in OASIS consulting group, Columbus, GA. Purification and testing of bottled drinking water. Certification and licensing of bottled drinking water.

– 1995 President, Chemical Consulting and Services, Inc. Austin, Texas. Custom research and problem solving in Chemistry

– 1999 Professor of Chemistry, Dept. Of Chemistry and Geology Columbus State University, Columbus, GA 1995 Chairman and Professor, Dept. of Chemistry and Geology, Columbus State University, Columbus, GA 1990 Chairman and Associate Professor, Dept. of Chemistry and Geology, Columbus State University, Columbus, GA

1986 Head of Chemistry Department and Associate Professor, University of Charleston, WV

1985 Assistant Professor of Chemistry, Cameron University, OK

1984 Lecturer in Chemistry, University of Texas, Austin, TX

1983 Postdoctoral Research Associate University of Texas, Austin, TX

1982 Postdoctoral Research Associate, Trinity University, TX

1981 Postdoctoral Research Associate, North Texas State University

1974-1980 Assistant Professor, University of Mozul

Summer Research Experience

1975 University of Birmingham, UK

1979 Max-Plank Institute, Germany

1986 Case Western Reserve University, Ohio

1994 Georgia State University, GA

Publications

Forty Eight papers published in National and International Journals, among them are: Macromolecules, Polymer, Physical Chemistry, Organic Chemistry, Chemical Physics Letters, Trans. Farad, Society, Coordination Chemistry and Fluorine Chemistry.

[LOGO] **DARINCO ENTERPRISES SDN BHD**
(385576-H)

Our Ref: DESB/0049/AGA-kl

Date: 10th July 2002

To Whom It May Concern

Ms. Laura Lee Sorsby

I have known Ms. Laura Lee Sorsby for many years. We have participated in business together and Ms. Sorsby has worked very hard to promote trade between The Malaysia and the United States of America for many years. I am pleased to advise you that we Darinco Enterprises Sendirian Berhad are not a partner in the United States with Ms. Sorsby.

We are excited to be involved with Ms. Sorsby and her colleagues. We have the utmost respect for her in our country. We hope our jointly-owned company as well as Ms. Sorsby's other companies, will promote trade between the USA and Malaysia. Ms. Sorsby has worked with Malaysia for many years. Through her hard work, determination, dedication, and honesty, we are now in a good position to put many things in place at both Government and Corporate Levels. This will give business opportunities to both American Companies and Malaysian Companies. Please see Darinco Enterprises Brochures and Profile. We have passed all the approvals and are registered to bid for supplies, to submit financial proposals for government projects, as well as bid for construction projects and supplies when the Malaysian Government puts out the tenders for such projects. We look forward to working with ms. Sorsby and giving USA manufacturers, financial and EPC firms as well as oil and gas refineries

the opportunity to work with our country with our group under the guidance of our partner Ms. Sorsby.

Yours sincerely,

DARINCO ENTERPRISES SDN.BHD.

/s/ Dato Abdul Ghani bin Awang
Dato Abdul Ghani bin Awang
Executive Chairman

[STAMP]

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CAN-AM INTERNATIONAL, L.L.C.	§	
Plaintiff,	§	**Case No.: H-01-3897**
v.	§	
THE REPUBLIC OF TRINIDAD AND TOBAGO and the TOBAGO HOUSE OF ASSEMBLY	§	**Hon. Judge Kenneth M. Hoyt**
Defendants.	§	

AFFIDAVIT OF MOHAMMED MOHAMMADI

On this day, Mohammad Mohammadi appeared before me, the undersigned notary public. After I administered an oath to him, upon his oath, he said:

> "My name is Mohammad Mohammadi. I am over 21 years of age and am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
>
> I have been involved in international business and finance for over 20 years. As a part of my work, I represent and manage an investment fund which has a value well in excess of $100 million dollars. Although the fund's investments are varied, one of its interests is investments aimed at raising necessary funds for the financing of infrastructure projects in developing nations.

I have known and conducted business with Ms. Laura Lee Sorsby since 1995. In March of 1998, Ms. Sorsby, representing Can-Am International, L.L.C., approached me about using a portion of the funds that I manage to aid in the financing of certain projects in the country of Trinidad & Tobago. Although we discussed many opportunities in the country, Ms. Sorsby primarily discussed specific projects to be built on the island of Tobago. She educated me on the potential of the projects and the future potential for business opportunities related to the projects in question for other companies in which the fund has an interest.

Based upon my trust in Ms. Sorsby, her appointment through Can-Am International, L.L.C., as Agent and Financial Consultant for Trinidad & Tobago by the Tobago House of Assembly, my analysis of the potential for making money not only through investment, but also potentially through construction contracts, and the availability of established private placement investment programs specifically targeted to benefit developing nations, I made the decision on behalf of the fund that I control to invest in the future of the country of Trinidad & Tobago. I advised Ms. Sorsby that I had $100 million available to use in conjunction with Trinidad & Tobago as an investment in private placement funding programs or to use as private funding to finance the projects discussed in Tobago. I understood that Ms. Sorsby would find an appropriate program for investment, and that failing to find a program that she deemed satisfactorily secure, would make the funds available to Trinidad & Tobago in the form of private financing with standard interest rates for like private

financing. The former funding program would allow my fund, as well as Trinidad & Tobago, to earn investment profit and generate money for financing of projects. The latter would allow my fund to make investment profit by charging interest for the use of its money and make our private funding available for the financing of projects in the country.

Ms. Sorsby arranged for an investment program through Bower Cotton in London which was acceptable to me. A later program through Bower Cotton, which was arranged without Ms. Sorsby's participation, would not have been acceptable. The first program was far more secure and protected our investment. Although the $100 million was available to Trinidad & Tobago through Ms. Sorsby, Ms. Sorsby advised me that the government had reneged on its agreement to put up $10 million as a co-participant in the private placement funding programs we had discussed and ultimately refused to accept any funds arranged by Ms. Sorsby and Can-Am International, L.L.C. Trinidad & Tobago's refusal to accept any funding program or private funds arranged for the country by Ms. Sorsby and Can-Am International, L.L.C. was the sole reason that my fund did not advance the $100 million for their use and benefit as agreed."

/s/ MOHAMMAD MOHAMMADI
MOHAMMAD MOHAMMADI

SWORN TO and SUBSCRIBED before me by MOHAMMAD MOHAMMADI on May ___, 2004.

_____
Notary Public in and for the State of _____

E4

Official Certification

Seen for authentication of the reverse side signature, affixed in our presence by Mr. Mohammad MOHAMMADI, born 25.03.1958. citizen of Canada, according to his information residing at Bachtobelweg 6, 8045 Zurich, identified by passport.

This legalization refers only to the signature and not to the contents or validity of the document.

Personal signature confirmed only; authorization to sign on behalf of the firm not verified.

Zurich, 21th May 2004
BK no. 41562/rc
CHF 20.

[Seal]

NOTARIAT ZURICH
(ALTSTADT)

/s/ J. Inglin

J. Inglin, Notariatssekretarin mbA
mit Beglaubigunsbefugnis

APPENDIX F

IRREVOCABLE PAYMENT ORDER CONFIRMATION

This Irrevocable Pay Order Confirmation is subject to the terms and conditions as herein set forth and is a full recourse commercial commitment pay order instrument issued under penalty of perjury and shall be governed by the laws as set forth by the International Chamber of Commerce (ICC) Current Edition, rules of conciliation and arbitration (latest amendment)

Date 30th April 1999

Reference THA/99/04/001

Subject Private Investment Placement(s)/ by **The Tobago House of Assembly, Scarborough, Tobago, West Indies (To include a first investment of US$10.00 Million and ANY AND ALL** further investments as may occur.

Disbursement Schedules

Of the total value of the Transaction under the above Reference code payable to the beneficiaries named in the signed and engrossed schedules annexed hereto without protest or delay without deductions and free of taxes, bank charges and/or fees.

Schedule for the disbursement instructions which will be lodged with the Disbursement Account prior to commencement and acknowledged and confirmed.

1. A total of 10% (Ten Percent) of the act disbursable profits received by The Tobago House of Assembly or any

Company on their behalf to facilitate the investment transaction, payable for each tranch [sic] to the disbursement account as per Appendix One.

We the Signatory undersigned hereby irrevocably guarantee with the full personal responsibility and authority that upon the closing and clearance of funds into the client disbursement account on each and every tranche [sic] in the above referenced transaction, we will instruct payment to the beneficiary named herein.

The Irrevocable Pay Order is valid upon commencement of the start of the transaction herein, and shall remain valid and enforceable for the full term of this transaction and shall apply to any and all terms and conditions as may be agreed between the parties, their shareholders and/or assignes pertaining/relating to this transaction.

It is unconditional, transferable, assignable and divisible. The Reference code and all/any other identification codes, Banks, Fiduciary or Trusts, shall remain the same not being changed without written consent of all participants, including all renewals, extensions, rollovers, additions.

All parties hereby agree and guarantee not to circumvent any of the parties to this transaction for a period of three (3) years and renewable automatically for a further three (3) years and shall comply with all aspects of the non-circumvention ICC regulations and will apply with all aspects of the Pay Order from the date of execution of the aforementioned Pay Order.

Ref THA 99/04/001

Beneficiary _____ Signatory Hochoy Charles

This document binds all parties, their employees, associates, transfers, assigns and/or designees. Any facsimile of

this document shall be deemed as legal and binding on all parties hereto and shall be so construed to any court of law regardless of State, nation or Province waiving all rights of immunity, regardless of whether diplomatic, sovereign or otherwise, which shall give this document full force and legal effect to true purpose and intent of this agreement as so construed by its signing parties.

Upon execution of this agreement, this Irrevocable Payment Order will be executed, following settlement and clearance of funds into the Disbursement Account for the first and subsequent tranches [sic]. Commission payment for each and every subsequent tranche [sic] thereafter shall be after settlement and clearance of funds into the Disbursement Account.

In the event this stipulation is not adhered to, the injured party shall be entitled to seek full remedial action and suitable indemnity as imposed by law, we hereby warrant, agree and guarantee with full personal and corporate responsibility and authority, to maintain this Irrevocable Pay Order with the Transaction Disbursement Account.

Beneficiaries:

Ms Laura Lee Sorsby (Passport USA No:132830279)
Can-Am International LIC
2530 Townhall Lane
Katy
Texas USA

/s/ Hochoy Charles
Signed for and behalf of Tobago House of Assembly

Name: The Honourable Hochoy Charles

Title: Chief Secretary, Tobago House of Assembly

I hereby certify that on the 30th day of April 1999, the above named subscribers appeared in person and proved their identity to me by valid identification consisting of a passport, numbered and issued as specified above. Said parties executed this document signed and declared by themselves in my presence as the Irrevocable Payment Order and gave affirmation under the penalties of perjury that the facts and statements contained herein are true and correct and that they acknowledged that they freely said voluntarily executed the foregoing for the purposes specified herein.

Witnessed and Acknowledged by:

Name Cewill E. Denoon
CEWILL E. DENOON
COMMISSIONER OF AFFIDAVITS
TOBAGO
10/5/99
Beneficiary ___THA 99/04/001 Signatory Cewill E. Denoon

IRREVOCABLE PAYMENT ORDER CONFIRMATION

APPENDIX ONE

DISBURSEMENT ACCOUNT

TO:) LAURA LEE SORSBY

BANK:)

BRANCH:) To be advised

ACCOUNT NO:)

REFERENCE:) THA 99/04/001

SUBJECT: Project Investment Contract/s For The Tobago House of Assembly, Tobago, W.I.

/s/ Hochoy Charles
For the Signatory
Name: The Honourable Hochoy Charles

/s/ Laura Lee Sorsby
Confirmation of Acceptance by Laura Lee Sorsby

Ref THA 99/04/001
Beneficiary /s/ LS Signatory /s/ Hochoy Charles

APPENDIX G

[SEAL]

Office of the Chief Secretary,
Tobago House of Assembly,
Jerningham Street,
Scarborough,
Tobago.

Fax. No. 639-5374
Tel. No. 639-2696

19th April, 1999

Mr. Peter Newton
Programme Manager
36 Whitefriars Street
London

Dear Sir

Letter of Exclusivity – Reference Code THA/9904-001

I HOCHOY CHARLES, Chief Secretary and Secretary for Finance, bearing Trinidad and Tobago passport no. D000691 of Tobago House of Assembly hereby with (herein after referred to as the affiant) full corporate, personal and legal responsibility under penalty of perjury of law, represent and attest that:

I, the undersigned, or any other principal party involved in this transaction, do not have any other party working or authorized to work with those funds allocated for the above mentioned reference code. Nor have any other party authorized to invest these funds, or have other funds from myself or the corporation placed with other parties for a similar investment program.

I, the undersigned, herewith grant the trade program manager/administrator/facilitator full exclusive right as

our sole agent for 20 banking days from the above date, to enter these funds for me, or the corporation into the best available bank-secured investment program. Further I attest that I have sent cease and desist notices to any other intermediaries or trade groups that have had our paperwork in the past.

I, the undersigned understand, and I am fully aware that this transaction will be registered with a major world bank and/or the Federal Reserve bank and the submitted private and confidential paperwork under reference code_THA/9904-001 will be forwarded for the sole purpose of establishing necessary dossier due diligence and clearance for this transaction.

Facsimiles of this statement are deemed as legally binding as delivered originals.

All statements herein are under penalty of perjury, so stated on this date the 19th day of April 1999, grantor.

HOCHOY CHARLES
Chief Secretary and Secretary for Finance passport no. D000691 issued by Ministry of National Security of Trinidad and Tobago, expires on 26/2/2002.

Notary

This instrument was acknowledged before me
This 30th day of April 1999

By C. E. Denoon, Commissioner of Affidavit in the City of Scarborough, Trinidad and Tobago.

Witnessed by my hand and official seal

G3

CEWILL E. DENOON
COMMISSIONER OF AFFIDAVIT
TOBAGO

Seal: My commission expires 31/12/1999

G4

[SEAL]

Office of Chief Secretary,
Tobago House of Assembly,
Jerningham Street,
Scarborough,
Tobago.

Fax. No. 639-5374
Tel. No. 639-2696

19th April, 1999

Mr. Peter Newton
36 Whitefriars Street
London
EC4Y8BH

Dear Sir

Non-Solicitation Letter and Request for Information – Reference Code THA/9904 – 001

I, HOCHOY CHARLES, Chief Secretary and Secretary for Finance, acting for and on behalf of the Tobago House of Assembly, bearing passport no D000691, authorised signatory of Tobago House of Assembly do hereby confirm that I have requested, or are hereby requesting from your organization specific confidential information regarding a current available private placement bank-secured investment program to serve our interest and purposes and not for further distribution.

I hereby agree to keep all information strictly confidential and will not disclose it to any other party. I hereby declare that I am fully aware that the information received from you is in direct response to our request and is not considered or to be intended to be a solicitation of any kind, and it is intended solely for our general knowledge only. I hereby affirm under penalty of perjury that I have requested this

specific information from you and your organization of my own choice and free will.

I understand that the contemplated transaction is strictly one of private placement and is in no way relying upon existing regulations relating to the United States Security Act of 1933 amended or related regulations and does not involve the sale of securities. I further declare that I am not a licensed securities broker or government employee and understand that neither are you or your organization.

I mutually agree that this private placement transaction is exempt from the Securities Act and is not intended for the general public. All materials are for private use only.

It is understood and agreed that the ICC non-disclosure/non-circumvention rules apply to this letter of intent/transaction and I hereby agree to the current applicable standards of the International Chamber of Commerce.

I hereby confirm that neither the program administrator nor anyone on their behalf has solicited me in any way, and that no document received or that I will receive shall be deemed to be a solicitation. Additionally, I confirm that there has not been any offer to buy or sell securities and that there is not intended to be an offer to buy or sell securities.

It is agreed that a facsimile or telefax copy of this letter of intent, the proof of funds or any other associated documents are as valid and legal [sic] binding as the delivered original.

All statements herein are made under penalty of perjury.

HOCHOY CHARLES, CHIEF SECRETARY and Secretary for Finance, passport no. D000691 issued by Ministry of National Security of Trinidad and Tobago, expires on 26/2/2000.

Notary

This instrument was acknowledged before me

This 30th day of April 1999

By C. E. Denoon, Commission of Affidavits in the City of Scarborough of Trinidad and Tobago.

Witnessed by my hand and official seal

CEWILL E. DENOON
COMMISSIONER OF AFFIDAVIT
TOBAGO

Seal: My commission expires 31/12/1999

G7

[SEAL]

Office of Chief Secretary,
Tobago House of Assembly,
Jerningham Street,
Scarborough,
Tobago.

Fax. No. 639-5374
Tel. No. 639-2696

19th April, 1999

Mr. Peter Newton
Programme Manager
36 Whitefriars Street
London
EC4Y8BH

Dear Sir

Letter of Intent – THA/9904-001

I, HOCHOY CHARLES, Chief Secretary and Secretary for Finance acting for and on behalf of the Tobago House of Assembly, bearing Trinidad and Tobago passport no. D000691 hereby confirm and attest with full legal and corporate responsibility, under penalty of perjury, that I am ready, willing and able to enter $ Ten Million US dollars for participation into a private bank-secured investment programme, subject to my approval of the contract. I attest and warrant with full responsibility that the herein referred funds are good, clean, cleared funds that have been legitimately earned or obtained and of non-criminal origin, that the funds are free and clear of any liens or encumbrances, that the funds are under myself without consent of my third party.

As evidence of my funds being available for participation in the initial amount of US $10 Million I have enclosed

with this exclusive letter of Intent and authority a copy of my latest bank statement for funds on deposit and/or a bank proof of funds letter.

I attest and warrant that I HOCHOY CHARLES, have bank-acknowledged signatory control, possession and title over these funds in this account, 95010035670 and signatory power for any agreements, that result from this proof of funds. I hereby authorize you and your banker to verify and confirm the herein referenced funds. My bank officer's name is Mr. Charles Mitchell his Tel. No. is 868-639-3485 and fax no. is 868-639-3857.

I herewith grant you the exclusive right to provide me with the best available investment program to facilitate the private placement of these funds. I attest that I have no other person(s) authorized to invest these specific funds into a similar program. It is understood and agreed that the ICC non-disclosure/non-circumvention rules apply to this letter of intent and the entire transaction and I hereby irrevocably agree to the current applicable standards of the International Chamber of Commerce.

I hereby confirm that neither the program administrator nor anyone on their behalf has solicited me in any way, and that no document received or that I will receive shall be deemed to be a solicitation. Additionally I confirm that there has not been any offer to buy or sell securities and that there is not intended to be an offer to buy or sell securities. It is agreed that a facsimile or telefax copy of this letter of intent, the proof of funds or any other associated documents are as valid and legal [sic] binding as the delivered original.

All statements herein are made under penalty of perjury.

HOCHOY CHARLES, Chief Secretary and Secretary for Finance, passport No. D000691 issued by Ministry of National Security of Trinidad and Tobago, expires on 26/2/2000 date.

Notary

This instrument was acknowledged before me Hochoy Charles

This 30th day of April 1999

By C. E. Denoon Commissioner of Affidavit in the City of Scarborough, Trinidad and Tobago.

Witnessed by my hand and official seal

CEWILL E. DENOON
COMMISSIONER OF AFFIDAVIT
TOBAGO

Seal: My commission expires 31/12/99

APPENDIX H

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (herein referred to as the "MOU") dated the 27th day of MARCH in the Year of Our Lord One thousand Nine Hundred and ninety-nine, by and between:

PARTY OF THE FIRST PART:

The TOBAGO HOUSE OF ASSEMBLY, whose address for the purpose of this MOU is

1 JERNINGHAM STREET SCARBOROUGH TOBAGO (Herein referred to as "THA");

And

Laura Lee Sorsby, CEO of CAN-AM INTERNATIONAL L.L.C., a limited liability company organized under the laws of the State of Texas, USA, which address for the purpose of this MOU is Laura Lee Sorsby, 2425 Townhall Lane, Katy, Texas, U.S.A. 77449 (hereinafter referred to as "the Financial Consultant", (CEO of CAN-AM).

RECITALS:

Whereas, the Financial Consultant, has certain expertise in financing and coordinating of government projects; and

Whereas, THA is considering for financing the following critical development projects outlined in the Tobago Development Plan to consist of, but not limited to:

- THE SOUTHWEST WASTE-WATER TREATR-MENT [sic] PLANT
- THE BELMONT ROAD-HIGHWAY

- THE RICHMOND WATER SUPPLY AND TREATMENT FACILITIES; and

WHEREAS, THA has appointed, the Financial Consultant, as the financial consultant for the projects, with the authority and responsibility to oversee the financing process on behalf of the Assembly; and

WHEREAS, the parties anticipate a productive relationship and desire to formalize their understanding of each party's obligations and benefits.

NOW THEREFORE, in consideration of the mutual benefits accruing hereunder and the mutual covenants contained herein, the Parties agree as follows:

I. RESPONSIBILITIES OF THA'S CONSULTANT LAURA LEE SORSBY

1.0 In connection with the appointment dated 22nd February, 1999, appointing Ms. Laura Lee Sorsby, CEO of CAN-AM, as financial consultant for the projects named, but not limited to, the authority and responsibility to oversee the financing process for the named projects, which responsibilities include the following:

a. Introducing different financing structures to THA for government review and selection.

b. Arranging the funding institution, for financing and placement of accounts, subject to THA approval.

c. Providing contractual arrangements with programme managers of trading groups acceptable to the THA showing the traders ability to create this type financing.

d. Negotiating, subject to the approval of THA, the interest rates payable on the funds held in the Government's account if THA pledges or blocks funds for the program selected to finance the identified projects.

e. Arranging for the profits generated by the financing program to go into a THA trust account for the payment of expenses related to the financing and for disbursements to the named projects acting as paymasters on [sic] upon approval of the THA.

f. Working with THA to arrange collateral, if required, for the financing program selected by THA.

g. In the event of conventional financing, arranging the lowest interest rates available on behalf of the THA for its selection and approval, taking into consideration all the terms of the loan.

h. Working jointly with THA for coordinating the identified projects for financing and for disbursing the funds for infrastructure projects.

i. Working jointly with THA selecting construction firms and taking bids that will be submitted to THA.

These responsibilities shall be performed subject to the conditions that:

1.1 All matters that require financial commitments by the THA shall be brought to the notice of the THA for agreement before any final commitments are made.

1.2 All schedules of payments and money management shall be determined and pursued only with the agreement of the THA, but the THA shall retain an open book policy with the Consultant.

1.3 The Financial Consultant or an appropriately identified and appointed agent of CAN-AM shall be available to the THA, or its appointed agents, at all times.

1.4 The agency appointment will remain in effect from the time trading begins or as long as THA is receiving funds through any trading programs of financial arrangements provided by the Financial Consultant or through any Clients introduced by Consultant.

1.5 This agency appointment can only be revoked in writing if the Financial Consultant fails to perform on the terms of this MOU.

II. RESPONSIBILITIES OF THA

2.0 In order to facilitate the efforts of the Financial Consultant in arranging financing for the named projects, the THA agrees as follows:

a. To provide the most feasible and high priority projects for financing

b. To get all necessary government approvals as requested by the Financial Consultant in order to implement the financing program selected by THA from those submitted by the Financial Consultant.

c. To execute all documents necessary to implement and carryout the selected financing program; including but not limited to, bank and trading agreements and all necessary

pay orders to be signed by government officials and lodged with the Trustee at the Trading Bank or other financial institution at the signing of the contract and before trading commences.

d. THA will arrange all necessary government collater as required to implement the selected financial program.

III. JOINT RESPONSIBILITIES

3.0 The parties agree that: If required, the Financial Consultant and THA will travel together to make the appropriate banking arrangements in order for THA to enter into the trading program.

a. The Financial Consultant and THA will jointly oversee the construction of the projects with the funding provided through the Financial Consultant's efforts. ~~With~~ [/s/ HAC] The THA and Consultant will act as JOINT PROJECT COORDINATOR.

b. An appointed Trustee of the Trading Bank (Trustee) will preside over THA Trust Account or Accounts containing the profits generated from private placement or other funding programs. A minimum of two signatures from the government shall be needed for disbursements. THA will allow the Financial Consultant to oversee disbursement with THA and the Financial Consultant will be allowed to review the account and returns jointly with THA.

IV. FEE AGREEMENT

4.1 For the services of financial consultant, THA agrees to pay the Financial Consultant a fee equal to ten percent (10%) of all monies earned from the private placement (or other funding programs) out of funds provided to THA generated by the funding program arranged by the Financial Consultant. This fee is to be paid ~~to~~ [/s/ HAC] directly to the Financial Consultant by the Trustee. The Trustee will then disburse profits of the private placement (or other funding programs) as the profits are realized, that is, on an approximately weekly basis or any time THA has disbursed any funds from the trade or loans. THA agrees to cooperate with the Financial Consultant in executing all documents required by the Trading Bank or other financial institutions to disburse the said fee to the Financial Consultant as agreed above. THA agrees to file a properly executed fee agreement and/or pay order authorizing payment of the said fee to the Financial Consultant. This authorized payment will be lodged with the Trading Bank or Trustee or another financial institution, prior to the funding or trading program is initiated, or a contract has been signed by THA entering THA into the program.

4.2 The Financial Consultant may charge a fee, to be approved by THA, for the services as project Coordinator. Such fee is to be negotiated for each project and based on the complexity of the project and the services to be performed by the Financial Consultant.

4.3 In the event that THA selects a form of conventional financing from the financing structures submitted by the Financial Consultant, the parties shall negotiate prior to the closing of the conventional financing a fee agreeable to both parties to

compensate the Financial Consultant for the services in arranging such financing. The fee to be payable upon closing.

V. CONFIDENTIALITY

5.1 Each of the parties agree to protect and not disclose, either directly or indirectly the Confidential and Proprietary Information disclosed by the other party without the prior, express written consent of the furnishing party. For the purpose of the MOU, "Confidential and Proprietary information" shall include, but to be limited to, any and all business-related disclosures made by each to the other. Whether such disclosures are made directly or indirectly, including business methods, financial assets, financing sources, individuals and/or private and government entities disclosed, introduced, or made known to, any of the parties by any other party, and shall include telephone numbers, addresses, telex, fax numbers, "e-mail" address, et al disclosed to a party by another party hereto. The parties will not in any manner make, solicit or accept any business from sources, individuals, and private and governmental entities made known to them by or through another party hereto without express, written permission if the party who disclosed, introduces or made known said source, individual, and entity.

5.2 This Confidentiality agreement does not apply to those companies, individuals, entities, and/or trusts, with which any of the parties hereto have had, or continue to have confirmed, verifiable, independently established business relations which predate this MOU. To establish such exclusion, verification of said relationship(s) and date(s) thereof must be presented in writing, and documented to

the other party within thirty (30) days after said excluded party is revealed.

VI. DURATION

6.1 This MOU shall remain in effect as long as THA is receiving funds through any trading programs or financial arrangements provided by the Financial Consultant.

6.2 In any event the Financial Consultant shall continue to receive payments of the agreed fee of ten percent (10%) of all monies generated by funding programs, submitted by the Financial Consultant, and entered into by THA. This is up to and including the expiration date, of this MOU, as amended from time to time, so long as the said funding program is in effect and generating funds on behalf of THA.

VII. NOTICES

7.0 All notices to be given by a party under this MOU shall be either delivered personally or sent by prepaid airmail, facsimile or by e-mail to the address of the other party as shown below, which address may be modified from time to time by giving the other party written notices.

The Tobago House of Assembly
Attention: HOCHOY CHARLES ESQ.
Address: 1 JERNINGHAM STREET,
SCARBOROUGH
TOBAGO
Telephone: 1 868 639-2696
Facsimile: 1 868 639-5374
E-mail:

Can-Am International, L.L.C.
Attention: Laura Lee Sorsby
Address: 2520 Townhall
Katy, Texas
77449
Telephone: 281-347-0685
Facsimile: 403-547-4108
E-mail: LALAG64080

VIII. MISCELLANEOUS

8.1 This MOU and all amendments thereto shall be governed and constructed in accordance with the laws of the Republic of Trinidad and Tobago.

8.2 No supplement, modification or amendment of the MOU shall be binding unless executed in writing by the parties.

8.3 This MOU may not be assigned without the prior written approval of the parties.

IN WITNESS Whereof, authorized representatives of the parties hereto have executed this document as shown below.

THE TOBAGO HOUSE OF ASSEMBLY

By: /s/ HCharles

FINANCIAL CONSULTANT FOR
TOBAGO HOUSE OF ASSEMBLY

BY: /s/ Laura Lee Sorsby

APPENDIX I

TOBAGO HOUSE OF ASSEMBLY

Office of the Chief Secretary
Tobago House of Assembly
Scarborough [SEAL]
Tobago

Fax No.: 660-7653
Tel. No.: 660-7063/64/65
E-mail: pordii@tstt.net.tt

22nd February, 1999

Ms. Laura Lee Sorsby
C/o Janice J. Cleavinger
5341 Pagewood Lane
Houston
Texas 77056

Dear Ms. Sorsby,

The Tobago House of Assembly proposes to secure financing for identified critical development projects outlined in the Tobago Development Plan.

The projects being considered for financing are:

- **THE SOUTH-WEST WASTE-WATER TREATMENT PLANT**
- **THE BELMONT ROAD-HIGHWAY**
- **THE RICHMOND WATER SUPPLY AND TREATMENT FACILITIES**

The Chief Secretary and Secretary for Finance and Planning, on behalf of the Executive Council, has agreed to appoint you, Ms. Laura Lee Sorsby, CEO of Can-Am International L.L.C. as the financial consultant for the projects, with the authority and responsibility to oversee the financing process, on behalf of the Assembly.

This appointment is subject to the following terms:

1. All matters that require financial commitments by the Assembly shall be – brought to the notice of the Tobago House of Assembly for agreement before any final commitments are made.

2. The Tobago House of Assembly or its appointed agents, shall be consistently notified of the developments in the loan processing and all related contingent conditions that may arise in due course of said process.

3. All schedules of payments and money management shall be determined and pursued only with the agreement of the Tobago House of Assembly.

4. Ms. Sorsby or an appropriately identified and appointed agent of CAN-AM must be available to the Tobago House of Assembly, or its appointed agents, at all times.

5. This agency will be revoked in writing if Ms. Sorsby has failed to perform.

6. This agency agreement will remain in effect for six months, with an option of renewal, subject to the Tobago House of Assembly's satisfaction with Ms. Laura-Lee Sorsby's performance and the continuance of its engagement with ongoing financing arranged by Can-Am International L.L.C.

The Tobago House of Assembly anticipates a productive relationship with CAN-AM International.

Yours,

/s/ Hochoy Charles
Honourable Hochoy Charles
Chief Secretary,
Tobago House of Assembly.